

BURNS
INDIANA STATUTES
ANNOTATED

■
CODE EDITION

TITLE 27, ARTS. 1-5

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BURNS INDIANA STATUTES ANNOTATED

CODE EDITION

TITLE 27
Articles 1-5

1999 REPLACEMENT VOLUME

*Annotations from North Eastern Reporter through
Volume 714, second series*

Original Edition by
HARRISON BURNS

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PREFACE

This 1999 replacement includes acts of the 1999 Regular Session. This volume is conformed to the Indiana Code as enacted by the 1976 Regular Session of the General Assembly, as amended. For the convenience of the user, the complete Code number, indicating title, article, chapter, and section of the Code, appears at the beginning of each section.

This volume contains notes to the following sources:

North Eastern Reporter, 2d Series, through 706 N.E.2d 547.
Supreme Court Reporter, through 119 S. Ct. 2418.
Federal Reporter, 3d Series, through 175 F.3d 1003.
Federal Supplement, 2d Series, through 43 F. Supp. 2d 268.
Federal Rules Decisions, through 186 F.R.D. 376.
Bankruptcy Reporter, through 235 Bankr. 498.
Opinions of Attorney General, through 98-8.

Also included are annotations to additional opinions of the Indiana Supreme Court, filed through August 4, 1999, *Angleton v. State*, 714 N.E.2d 156, 1999 Ind. LEXIS 555 (Ind. 1999); the Indiana Court of Appeals, filed through August 6, 1999, *Sallee v. Mason*, 714 N.E.2d 757, 1999 Ind. App. LEXIS 1352 (Ind. App. 1999); and the Indiana Tax Court, filed through July 12, 1999, *Morris v. State Bd. of Tax Comm'rs*, 712 N.E.2d 1120, 1999 Ind. Tax LEXIS 26 (Ind. Tax 1999).

The annotations also include references to the Indiana Law Journal, Indiana Law Review, Notre Dame Law Review, *Res Gestae*, and *Valparaiso University Law Review*. These and other helpful notes and references have been reviewed, updated, and relocated where necessary. Cross reference notes providing directions to statutory material of similar and/or related subject matter located elsewhere in the Code are provided. Where a law has been repealed, the compiler's notes to that section contain a reference to any new or present provision on a similar subject, where applicable.

If you have questions or suggestions concerning Burns' Statutes, please write, call toll free 1-800-446-3410, fax toll free 1-800-643-1280, visit our website at www.lexislawpublishing.com, or email us at llp.customer.support@lexis-nexis.com. Direct written inquiries to:

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December 1999

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USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from Burns' Indiana Statutes Annotated, a User's Guide is included with the set. The Guide contains comments and information on the many features found in the Burns' Statutes volumes, which are intended to increase the usefulness of the set. See the volume containing Titles 1, 2, and 3 for the complete User's Guide.

From the time of the publication of the official Indiana Code, Burns' Indiana Statutes Annotated was the only annotated and annotated source of the official statute law of Indiana with the exception of a revised edition of Indiana published by E.D. Meyers & Co. (Chicago, Illinois) in 1904, and Babin's 1904 Indiana Statutes published by the Statute Law Publishing Company, Cleveland, Ohio.

In December, 1904, Burness Burns of Vincennes, Indiana, entered into an agreement which led to the publication of Burns' Indiana Statutes in three volumes in 1904. This work followed the suggestion of the Revised Statutes of 1901 but also contained work of Burness' author's own hand through the years 1904-1905 and it was completely revised and reprinted several times were published in 1905 and 1906. Additional revisions by Burness Burns were required in 1908 and 1910 and the 1914 revision was implemented in 1914 and 1915. A complete revision edited by Frederick A. Wilson was published in 1926 and supplemented in 1928.

In 1928, Burns' Burns' Indiana Statutes of a new and revised edition of Burns' Indiana Statutes appeared in 12 volumes, completely rewritten, revised and edited by the publisher's editorial staff. This edition contained a new system of organization, provided an annual supplement of each volume and 12 individual volume editions to keep the work current and up to date at all times. This edition was also revised by Burness Burns and revised, and was the standard reference for Indiana Statutes until it was replaced by the present Burns' Code Edition beginning in 1971. The Burns' Code Edition, also completely rewritten and revised, was necessary to update the organization and numbering system of the Indiana Code of 1971, which was carried over from the Indiana Code of 1928.

In 1971, the Law Division of the Indiana State Bar Association was created by The Indiana Company, and for a number of years the Burns' Code was published under the name of the Indiana State Bar Association. While there has been a number of editorial personnel working on Burns' Indiana Statutes, the editorial committee in 1971 the Burns' Code was published under the name of The Indiana Company, and following editorial supervision by the publisher, only the publisher's editorial staff. It is the Burns' Code and the publisher's to continue to provide an authoritative, useful and convenient edition of the Indiana Statutes Annotated.

History of Burns' Statutes Annotated

For one hundred ten years, the Bench and Bar of Indiana have relied on Burns' Indiana Statutes Annotated, published first by The Bobbs-Merrill Company and now by LEXIS Law Publishing, formerly The Michie Company. Bobbs-Merrill first became involved in 1889 with the publication of Elliott's Supplement to the Revised Statutes of 1881 by the Bowen-Merrill Company, a predecessor company. (The Revised Statutes of 1881 are an unenacted compilation sanctioned by the state of Indiana.)

From that time until the publication of the official Indiana Code, Burns' Indiana Statutes Annotated was the sole organized and indexed source of the official statute law of Indiana with the exception of Revised Statutes of Indiana published by E.D. Meyers & Co., Chicago, Illinois in 1896, and Baldwin's 1934 Indiana Statutes published by the Baldwin Law Publishing Company, Cleveland, Ohio.

On November 3, 1892, Harrison Burns of Vincennes, Indiana, entered into an agreement which led to the publication of Burns' Annotated Indiana Statutes in three volumes in 1894. This work followed the organization of the Revised Statutes of 1881 but the sections were all assigned numbers continuously through the three volumes and it was completely annotated and fully indexed. Supplements were published in 1895 and 1897. Additional revisions by Judge Burns were required in 1908 and 1914 and the 1914 revision was supplemented in 1918 and 1921. A complete revision edited by Benjamin F. Watson was published in 1926 and supplemented in 1929.

In 1933, Bobbs-Merrill began publication of a new and improved edition of Burns' Annotated Indiana Statutes in 12 volumes, completely annotated, indexed and edited by the publisher's editorial staff. This edition contained a new section numbering system, provided for annual supplementation of each volume and for individual volume revision to keep the work current and up-to-date at all times. This edition was kept current by supplementation and revision and was the standard reference for Indiana Statutes until it was replaced by the present Burns' Code Edition beginning in 1972. The Burns' Code Edition, also completely annotated and indexed, was necessary to conform to the organization and numbering system of the Indiana Code of 1971 which was carried into the official Indiana Code of 1976.

In 1976, the Law Division of the Bobbs-Merrill Company was acquired by The Michie Company, and for a number of years the Burns' Code was published under the name Michie/Bobbs-Merrill. While there has been a continuity of editorial personnel working on Burns' Indiana Statutes Annotated, beginning in 1985 the Burns' Code was published under the name of The Michie Company, and, following subsequent acquisitions, is now published under the name of LEXIS Law Publishing. It is the desire and goal of the Publishers to continue to provide an authoritative, useful and convenient edition of the Indiana Statutes Annotated.

EFFECTIVE DATES OF ACTS AND STATUTES WITHOUT EFFECTIVE DATE PROVISIONS

Between 1979 and 1987, under IC 1-1-3-3, each act passed at a regular session of the general assembly took effect on September 1 next following its enactment, unless a different time was specified in the act. In 1987, IC 1-1-3-3 was amended to change the date to July 1. Prior to the adoption of IC 1-1-3-3, the effective date of acts which did not contain an emergency clause was the date of the last filing in the counties as shown by the proclamation of the governor under IC 1-1-3-2. The table below lists the effective dates for acts and statutes which did not contain other effective date provisions.

[R. = Regular Session; S. = Special Session]

1842-1843 Revised Statutes	Approved Feb. 11, 1843—no effective date record
1851-1852 Special Acts	November 6, 1852
1851-1852 Revised Statutes	May 6, 1853
1853	July 24, 1853
1855	August 17, 1855
1857	August 24, 1857
1858 S.	August 6, 1859
1859	August 6, 1859
1861	July 5, 1861
1861 S.	September 7, 1861
1863	October 10, 1863
1865	September 2, 1865
1865 S.	April 13, 1866
1867	June 6, 1867
1869 R. and S.	August 16, 1869
1871	July 10, 1871
1872 S.	July 7, 1873
1873	July 7, 1873
1875 R. and S.	August 24, 1875
1877 R. and S.	July 2, 1877
1879 R. and S.	May 31, 1879
1881 R. and S.	September 19, 1881
1883	June 5, 1883
1885 R. and S.	July 18, 1885
1887	May 21, 1887
1889	May 10, 1889
1891	June 3, 1891
1893	May 18, 1893
1895	June 28, 1895
1897	April 14, 1897
1899	April 27, 1899
1901	May 15, 1901
1903	April 23, 1903
1905	April 15, 1905
1907	April 10, 1907
1908 S.	November 20, 1908
1909	April 5, 1909
1911	April 21, 1911
1913	April 30, 1913
1915	April 26, 1915
1917	May 31, 1917
1919	May 15, 1919
1920 S.	January 16, 1920
1920 S.	November 13, 1920
1921	May 31, 1921
1921 S.	December 14, 1921
1923	April 30, 1923

EFFECTIVE DATES OF ACTS

1925	April 25, 1925
1927	May 16, 1927
1929	May 21, 1929
1931	June 30, 1931
1932 S.	September 30, 1932
1933	May 22, 1933
1935	June 10, 1935
1936 S.	May 11, 1936
1937	June 7, 1937
1938 S.	Each act effective on date of approval
1939	June 14, 1939
1941	July 8, 1941
1943	November 3, 1943
1944 (1st S.S.)	April 11, 1944
1944 (2nd S.S.)	November 4, 1944
1945	December 12, 1945
1947	August 21, 1947
1949	September 10, 1949
1951	July 20, 1951
1951 S.	Each act effective on date of approval
1953	September 18, 1953
1955	June 30, 1955
1957	June 25, 1957
1959	July 20, 1959
1961	July 6, 1961
1963 R. and S.	August 12, 1963
1965	July 8, 1965
1965 (1st S.S.)	Each act effective on date of approval
1965 (2nd S.S.)	December 29, 1965
1967	July 26, 1967
1969	August 18, 1969
1971	September 2, 1971
1972	July 28, 1972
1973	July 26, 1973
1974	June 11, 1974
1975	July 29, 1975
1976	June 2, 1976
1977	August 29, 1977
1978	June 28, 1978
1979-1987	September 1
1988 and subsequent years	July 1

TABLE OF CORRESPONDING SECTIONS

The following table lists the former Burns' Statute section numbers which were originally included in this volume and the corresponding Code number under which the section originally appeared.

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CHAPTER 1

DEPARTMENT OF INSURANCE

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- 27-1-1-1. Creation of department — Rights, powers and duties — Exercise by commissioner.
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- 27-1-1-4. Salaries and termination of personnel.
- 27-1-1-5. [Repealed.]

27-1-1-1. Creation of department — Rights, powers and duties — Exercise by commissioner. — There is hereby created a department in the state government of the state of Indiana which shall be known as the department of insurance. Said department shall have charge of the organization, supervision, regulation, examination, rehabilitation, liquidation, and/or conservation of all insurance companies to which this title is applicable, shall have charge of the enforcement, administration, and execution of the provisions of this title and the provisions of any other statute applicable to insurance companies, to the insurance department, or to the insurance commissioner, and shall exercise such other powers and perform such other duties as may at any time be imposed or conferred on the department by law. Wherever by any of the provisions of any statute any right, power, or duty is imposed or conferred on the department, the right, power, or duty so imposed or conferred shall be possessed and exercised by the insurance commissioner, unless otherwise provided in that statute, or unless any such right, power, or duty is delegated to the duly appointed deputies, assistants, or employees of the department, or any of them, by an appropriate rule or order of the insurance commissioner, [Acts 1945, ch. 351, § 1, p. 1694; P.L.252-1985, § 1.]

Cross References. Abstract and title insurance companies, examination by insurance commissioner, IC 27-7-3-13.

Alcoholic beverage permittee surety bonds, furnishing insurance commissioner information on surety, IC 7.1-3-1-10.

Duty to approve state police pension or benefit fund, IC 10-1-2-7.

Motor vehicle insurers, examination, reserves, report of financial condition, IC 27-2-8-1.

Subsidiary insurance companies, approval of plan of acquisition of stock by insurance commissioner, IC 27-3-3-2.

Indiana Law Review. A Study of Medical Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

Survey of Recent Developments in Insurance Law, 27 Ind. L. Rev. 1171 (1994).

Notre Dame Law Review. The Merger of Banking and Insurance: Will Congress Close

the South Dakota Loophole, 60 Notre Dame L. Rev. 762.

Cited: Allen v. Pavach, 263 Ind. 574, 49 Ind. Dec. 145, 335 N.E.2d 219 (1975).

NOTES TO DECISIONS

ANALYSIS

Commissioner.

—Party in actions involving department.

Commissioner.

—Party in Actions Involving Department.

Insofar as the commissioner is the repre-

sentative of the department of insurance, it is only proper that he be named in any cause of action involving the department. Employers Ins. v. Commissioner of Dep't of Ins., 452 N.E.2d 441 (Ind. App. 1983).

Collateral References. Liability of insurer or agent of insurer for failure to advise insured as to coverage needs. 88 A.L.R.4th 249.

Construction and application of preemption

exemption, under Employee Retirement Income Security Act (29 U.S.C. §§ 1001 et seq.), for state laws regulating insurance, banking, or securities (29 U.S.C. § 1144(b)(2)). 87 A.L.R. Fed. 797.

27-1-1-2. Insurance commissioner — Appointment — Term — Oath and bond — Duties. — The powers, duties, management and control of the department of insurance are hereby conferred on and vested in the “insurance commissioner.” The insurance commissioner shall be appointed by the governor, and shall be familiar with and known to possess a knowledge of the subject of insurance and be skilled in matters pertaining thereto and shall be chosen solely for fitness, irrespective of his political beliefs or affiliations. The commissioner shall serve and may be removed at the pleasure of the governor, and shall be the chief executive and administrative officer of the department. The insurance commissioner shall receive an annual salary of eleven thousand five hundred dollars (\$11,500), which shall be in full of all services performed by him in any capacity. The commissioner shall take an oath of office and give bond in the sum of fifty thousand dollars (\$50,000) with surety to be approved by the governor for the faithful performance of his duties.

The commissioner is authorized to attend and participate in the meetings of the national convention of insurance commissioners and of the committees thereof, and he may require such of his deputies, actuaries and assistants as he may designate to attend and participate in such meetings. If he deems it advisable he may request the attorney-general or a deputy attorney-general to attend and participate in such meetings with him. He and his deputies, actuaries, assistants and attorneys as aforesaid shall aid in promoting improvements in the insurance laws and the uniformity thereof in the several states. The expense of such attendance by the commissioner, and his deputies, actuaries, assistants and attorneys as aforesaid shall be paid by the state treasurer upon the warrant of the commissioner certifying therein that he has examined and approved the charges for such expenses. [Acts 1945, ch. 351, § 2, p. 1694; 1959, ch. 351, § 1.]

Compiler's Notes. The provision in this section establishing the salary of the insurance commissioner may be superseded by the Budget Agency Act (IC 4-12-1).

Cross References. Abstract and title insurance companies, examination, IC 27-7-3-13.

Cancellation of motor vehicle insurance policy, hearing before commissioner, IC 27-7-6-11.

Consumer credit code rules and regulations, IC 24-4.5-4-112.

Cooperation with department of financial institutions, IC 24-4.5-4-111.

Equity securities of insurance companies, IC 27-2-10.

Foreign companies, insurance commissioner agent to receive process, IC 27-1-17-4, IC 27-8-1-13.

Foreign life or accident assessment plan companies, revocation of license for failure to file annual report, IC 27-8-1-15.

Inclusion of insurance commissioner in state personnel system, IC 4-15-2.5-1.1.

Insurance guaranty association, powers of commissioner, IC 27-6-8-9.

Insurance guaranty associations, approval of directors and plan of operation, IC 27-6-8-6, IC 27-6-8-8.

Interest in insurance business prohibited, IC 27-1-3-2.

Issuance to companies of authority to transact business, IC 27-1-3-20.

Judicial review of commissioner's actions, IC 27-1-23-12.

Lloyds insurance companies, duties, IC 27-7-1-8.

Motor vehicle insurers, list of qualified insurers furnished state departments, IC 27-2-8-1.

Nonliability for official acts, IC 27-1-3-1.

Report of department to governor, IC 27-1-3-6.

Report to attorney-general of illegal business by foreign life or accident assessment plan companies, IC 27-8-1-16.

Rights, powers and duties of insurance department to be exercised by insurance commissioner, IC 27-1-1-1.

Unauthorized insurers, enforcement of law, IC 27-4-5-3.

Unauthorized insurers, false advertising, duties, IC 27-4-6-4.

Unauthorized insurers, service of process, IC 27-4-4-3.

Worker's compensation insurance, insurance commissioner agent to receive process, IC 27-7-2-24.

Worker's compensation insurance rating rules and regulations, IC 27-7-2-30.

NOTES TO DECISIONS

Party in Actions Involving Department.

Insofar as the commissioner is the representative of the department of insurance, it is only proper that he be named in any cause of

action involving the department. *Employers Ins. v. Commissioner of Dep't of Ins.*, 452 N.E.2d 441 (Ind. App. 1983).

27-1-1-3. Chief deputy — Actuary — Securities deputy — Other deputies, examiners and assistants — Bond of security deputy and securities clerks. — The commissioner, with the approval of the governor shall appoint a chief deputy, an actuary, a securities deputy, and such other deputies, examiners, assistants and other employees as may be necessary to carry on the work of the department. With respect to all of such positions, aptitude, previous training and experience, intelligence and moral and physical qualifications shall be carefully considered and such employees shall be chosen for their fitness, either professional or practical, as the nature of the position may require, irrespective of their political beliefs or affiliations; it being the responsibility of the commissioner to develop and maintain a highly trained and effective personnel within the insurance department. The actuary of the department shall have had at least five (5) years experience in a responsible actuarial position in a life or casualty insurance company, in consulting actuarial practice, or in a comparable actuarial position in a state or federal agency; however, only two (2) years experience of the type aforesaid shall be required (a) if the applicant is a fellow or associate of the society of actuaries or the casualty actuarial

society, or (b) if said applicant has completed courses in actuarial mathematics or theory in an accredited college or university. The technical or professional qualifications of any applicant shall be determined by examination, professional rating or otherwise, as the commissioner, with the approval of the governor, shall determine. The securities deputy and any securities clerk shall each give bond in the sum fixed by the governor, but not less than twenty-five thousand dollars (\$25,000) surety with the approval of the governor, for the faithful performance of their duties. [Acts 1945, ch. 351, § 3, p. 1694; 1959, ch. 351, § 2.]

Opinions of Attorney General. The offices of first deputy, insurance commissioner and trustee of public employees' retirement fund could not be held by one person. 1947, No. 40, p. 201.

27-1-1-4. Salaries and termination of personnel. — The annual salaries of personnel of the department, other than the commissioner, shall be fixed by the commissioner with approval of the governor and budget agency. The commissioner shall have the power at any time to terminate the services of any employee of the department for inefficiency, incompetency or neglect of or failure to perform his duties. [Acts 1945, ch. 351, § 4, p. 1694; 1959, ch. 351, § 3; 1963 (Spec. Sess.), ch. 8, § 1.]

Cross References. Budget Agency Act, IC 4-12-1.

27-1-1-5. [Repealed.]

Compiler's Notes. This section, relating to transfer of powers and duties from the insurance department, was repealed by P.L.4-1988, § 17, effective July 1, 1988.

CHAPTER 2
INSURANCE LAW — DEFINITIONS

SECTION.	SECTION.
27-1-2-1. Short title.	27-1-2-3. Definitions.
27-1-2-2. Applicability of article.	27-1-2-4. Penalty for violation of Indiana Insurance Law.
27-1-2-2.5. Registration — Coverage subject to Employee Retirement Income Security Act.	

27-1-2-1. Short title. — IC 27-1-2 through IC 27-1-20 shall be known and may be cited as the Indiana Insurance Law. [Acts 1935, ch. 162, § 1, p. 588; P.L.252-1985, § 3.]

Opinions of Attorney General. Under the provisions of this law, and taking into consideration the practices and customs of the department of insurance, an officer of a life insurance company could be licensed as an agent for the life insurance company. There was no statutory prohibition against such licensing. 1960, No. 33, p. 200.

27-1-2-2. Applicability of article. — This article shall be applicable to all persons, firms, partnerships, corporations, associations, orders, societies, and systems and to associations operating as Lloyds, interinsurers, or individual underwriters authorized as of March 8, 1935, to make insurance

under the provisions of any statute enacted prior to March 8, 1935, or organized or incorporated before or after March 8, 1935, under the provisions of any statute of this state, or which are doing or attempting to do, or which are representing that they are doing an insurance business in this state, or which are in process of organization for the purpose of doing or attempting to do such business. All domestic, foreign, and alien companies authorized to do business in this state shall be subject to this article; however, any not-for-profit corporation which pays death benefits to the owner of a valuable registered horse on the death of said horse shall for that purpose not be subject to this article. [Acts 1935, ch. 162, § 2, p. 588; 1973, P.L. 269, § 1; P.L.252-1985, § 4; P.L.8-1993, § 408.]

Cross References. Charitable corporations insuring life of horse excepted from insurance regulatory laws, IC 27-1-7-2.

NOTES TO DECISIONS

In General.

A voluntary unincorporated society limited to 500 individuals and sponsored by a church, whose constitution provided for payment of death benefits out of assessments of members, was not exempt from the provisions of the insurance law under former IC 27-1-14-27, which exempted an association of local lodges of a society doing business in the state at the time the act was passed and which provided death benefits not exceeding \$500, especially where such society was not authorized to do business in the state at the time the act was passed. Department of Ins. v. Noblesville Brother-Sisterhood, 117 Ind. App. 527, 72 N.E.2d 240 (1947).

A voluntary unincorporated society limited to 500 individuals and sponsored by a church, whose constitution provided for payment of death benefits out of assessments of members, was the type of organization referred to in former IC 27-1-14-27, excepting from the

provision of the insurance law domestic lodges, orders of associations of a purely religious, charitable and benevolent description, which did not provide for death benefits of more than \$100, and hence it could not obtain the benefit of the exemption so long as it paid death benefits in excess of \$100. Department of Ins. v. Noblesville Brother-Sisterhood, 117 Ind. App. 527, 72 N.E.2d 240 (1947).

A voluntary unincorporated society limited to 500 individuals and sponsored by a church, whose constitution provided for payment of death benefits out of assessments of members, was not similar to a society or organization such as the Elks, Moose or Knights of Columbus, so as to be exempt from the provisions of the insurance law under former IC 27-1-14-27, which exempted such named organizations and similar organizations which did not issue insurance certificates. Department of Ins. v. Noblesville Brother-Sisterhood, 117 Ind. App. 527, 72 N.E.2d 240 (1947).

27-1-2-2.5. Registration — Coverage subject to Employee Retirement Income Security Act. — A person or other entity that provides coverage in Indiana for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, optometric, or podiatric expenses, whether coverage is by direct payment, reimbursement, or other means, shall:

- (1) Register with the commissioner; and
- (2) Indicate in the registration if the coverage provided by the person or other entity is an employee benefit plan subject to the Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.). [P.L.147-1990, § 1.]

27-1-2-3. Definitions. — As used in this article, and unless a different meaning appears from the context: (a) "Insurance" means a contract of

insurance or an agreement by which one (1) party, for a consideration, promises to pay money or its equivalent or to do an act valuable to the insured upon the destruction, loss or injury of something in which the other party has a pecuniary interest, or in consideration of a price paid, adequate to the risk, becomes security to the other against loss by certain specified risks; to grant indemnity or security against loss for a consideration.

(b) "Commissioner" means the "insurance commissioner" of this state.

(c) "Department" means "the department of insurance" of this state.

(d) The term "company" or "corporation" means an insurance company and includes all persons, partnerships, corporations, associations, orders or societies engaged in or proposing to engage in making any kind of insurance authorized by the laws of this state.

(e) The term "domestic company" or "domestic corporation" means an insurance company organized under the insurance laws of this state.

(f) The term "foreign company" or "foreign corporation" means an insurance company organized under the laws of any state of the United States other than this state or under the laws of any territory or insular possession of the United States or the District of Columbia.

(g) The term "alien company" or "alien corporation" means an insurance company organized under the laws of any country other than the United States or territory or insular possession thereof or of the District of Columbia.

(h) The term "person" includes individuals, corporations, associations, and partnerships; personal pronoun includes all genders; the singular includes the plural and the plural includes the singular.

(i) [Omitted by 1977 amendment.]

(j) [Omitted by 1977 amendment.]

(k) The term "insurance solicitor" means any natural person employed to aid an insurance agent in any manner in soliciting, negotiating or effecting contracts of insurance or indemnity other than life.

(l) The term "principal office" means that office maintained by the corporation in this state, the address of which is required by the provisions of this article to be kept on file in the office of the department.

(m) The term "articles of incorporation" includes both the original articles of incorporation and any and all amendments thereto, except where the original articles of incorporation only are expressly referred to, and includes articles of merger, consolidation and reinsurance, and in case of corporations, heretofore organized, articles of reorganization filed in the office of the secretary of state, and all amendments thereto.

(n) The term "shareholder" means one who is a holder of record of shares of stock in a corporation, unless the context otherwise requires.

(o) The term "policyholder" means one who is a holder of a contract of insurance in an insurance company.

(p) The term "member" means one who holds a contract of insurance or is insured in an insurance company other than a stock corporation.

(q) The term "capital stock" means the aggregate amount of the par value of all shares of capital stock.

(r) The term "capital" means the aggregate amount paid in on the shares of capital stock of a corporation issued and outstanding.

(s) The term "life insurance company" means any company making one or more of the kinds of insurance set out and defined in class 1(a) of IC 27-1-5-1.

(t) The term "casualty insurance company" means any company making the kind or kinds of insurance set out and defined in class 2 of IC 27-1-5-1.

(u) The term "fire and marine insurance company" means any company making the kind or kinds of insurance set out and defined in class 3 of IC 27-1-5-1.

(v) The term "certificate of authority" means an instrument in writing issued by the department to an insurer, which sets out the authority of such insurer to engage in the business of insurance or activities connected therewith.

(w) The term "premium" means money or any other thing of value paid or given in consideration to an insurer, agent, or solicitor on account of or in connection with a contract of insurance and shall include as a part but not in limitation of the above, policy fees, admission fees, membership fees and regular or special assessments and payments made on account of annuities.

(x) The term "insurer" means a company, firm, partnership, association, order, society or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal or inter-insurers, or individual underwriters.

(y) The terms "assessment plan" and "assessment insurance" mean the mode or plan and the business of a corporation, association or society organized and limited to the making of insurance on the lives of persons and against disability from disease, bodily injury or death by accident, and which provides for the payment of policy claims, accumulation of reserve or emergency funds, and the expenses of the management and prosecution of its business by payments to be made either at stated periods named in the contract or upon assessments, and wherein the insured's liability to contribute is not limited to a fixed sum. [Acts 1935, ch. 162, § 3; p. 588; 1963, ch. 203, § 1; 1977, P.L. 208, § 1; P.L.8-1993, § 409.]

Indiana Law Journal. Consumer Warranty or Insurance Contract? A View Towards a Rational State Regulatory Policy, 51 Ind. L.J. 1103.

Opinions of Attorney General. Theatre bank night certificates issued as security against loss from failure to attend on bank night constituted insurance within the meaning of insurance law. 1936, p. 188.

The law did not contemplate and did not authorize a "life insurance broker" either as a corporation or as a natural person. 1940, p. 191.

Arrangements whereby an automobile club undertakes to pay its members money for expenses incurred by them for road services including mechanical aid, tire changing, towing and accident expense aid constitute the making of insurance and such undertakings

are insurance contracts apart from other things which the club might undertake to do for its members. 1952, No. 10, p. 53.

By the provisions of former IC 9-4-1-132, permitting a motor club to issue membership cards containing a bail bond guarantee, it appears that the legislature regarded such bonds as not being included in insurance. 1952, No. 10, p. 53.

Cited: *Foremost Life Ins. Co. v. Department of Ins.*, 274 Ind. 181, 78 Ind. Dec. 346, 409 N.E.2d 1092 (1980); *Indiana Dep't of Ins. v. Zenith Re-Insurance Co.*, 583 N.E.2d 201 (Ind. App. 1991); *Indiana Dep't of Ins. v. Zenith Re-Insurance Co.*, 596 N.E.2d 228 (Ind. 1992); *City of Gary v. Allstate Ins. Co.*, 612 N.E.2d 115 (Ind. 1993); *Smoker v. Hill & Assocs.*, 204 Bankr. 966 (N.D. Ind. 1997).

NOTES TO DECISIONS

ANALYSIS

Insurance company.
 Interpretation of contract.
 Unauthorized business of insurance.

Insurance Company.

An agency which does not make insurance but merely acts as agent, broker or representative for the solicitation of insurance business is not an insurance company, association or society within the statute prohibiting granting of an order, judgment or decree providing for the accounting by or interfering with the operation of any such company (IC 27-1-20-23). *State ex rel. Meade v. Marion* Superior Court, 242 Ind. 22, 174 N.E.2d 408 (1961).

Interpretation of Contract.

A policy of insurance is a contract and its

interpretation is controlled by the same law as that governing any other contract. *Potomac Ins. Co. v. Stanley*, 281 F.2d 775 (7th Cir. 1960).

Unauthorized Business of Insurance.

An organization composed of several local governments for the purpose of pooling risk of loss engaged in the unauthorized business of insurance by soliciting participation from other political subdivisions where the contract for the pool had been drafted by a consulting group, townships were solicited for membership by a public relations firm which received commissions for its efforts, and the pool was a member of a reinsurance group which provided protection above a certain dollar level of loss. *Eakin v. Indiana Intergovernmental Risk Mgt. Auth.*, 557 N.E.2d 1095 (Ind. App. 1990).

Collateral References. Who is an "executive officer" of insured within meaning of liability insurance policy. 1 A.L.R.5th 132.

27-1-2-4. Penalty for violation of Indiana Insurance Law. — A person who recklessly violates the Indiana Insurance Law (chapters 2 through 20 of this article) commits a Class A misdemeanor, except as otherwise provided. [IC 27-1-2-4, as added by Acts 1978, P.L. 2, § 2701; P.L.82-1998, § 1.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

CHAPTER 3

INSURANCE LAW — DEPARTMENT OF INSURANCE

SECTION.

- 27-1-3-1. Liability for official acts.
- 27-1-3-2. Prohibited affiliations.
- 27-1-3-3. Seal.
- 27-1-3-4. Management of insurance companies.
- 27-1-3-5. Certificates, reports and other papers as evidence.
- 27-1-3-6. Annual report of department.
- 27-1-3-7. Rules and regulations.
- 27-1-3-8, 27-1-3-9. [Repealed.]
- 27-1-3-10. Revocation or suspension of authority.
- 27-1-3-10.5. Disclosure of certain information prohibited.
- 27-1-3-11. Disclosure of information.
- 27-1-3-12. Examination by commissioners' convention.

SECTION.

- 27-1-3-13. Form of annual statement — Compensation information filed separately.
- 27-1-3-14. Notice of insolvency or suspension — Penalty.
- 27-1-3-15. Fees and charges.
- 27-1-3-16. Taxes and fees paid into state treasury — Expenses of administration of article paid from general fund.
- 27-1-3-17. [Repealed.]
- 27-1-3-18. Solicitation of political contributions — Penalty.
- 27-1-3-19. Illegal or unsafe practices.
- 27-1-3-20. Certificate of authority — Issuance to companies — Notification by company of election or appointment of new directors

SECTION.

- Prerequisite to transacting business — Penalty.
- 27-1-3-21. Execution of instruments by insurance department.
- 27-1-3-22. Immunity from liability for reporting suspected fraudulent insurance acts.
- 27-1-3-23. Recovery of attorney's fees.
- 27-1-3-24. Payment of dividend from source other than earned surplus.
- 27-1-3-25. Review of dividends.

SECTION.

- 27-1-3-26. Order to limit — Inadequate surplus.
- 27-1-3-27. Order to limit dividends — Financially distressed insurer.
- 27-1-3-28. Department of insurance fund established.
- 27-1-3-29. Enforceability of policy exceeding insurer's authority — Enforceability of policy in violation of statute or rule — Reformation of policy.

27-1-3-1. Liability for official acts. — Neither the insurance commissioner nor the several officers and employees of the department shall be liable, in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this article. [Acts 1935, ch. 162, § 8, p. 588; P.L.252-1985, § 5.]

NOTES TO DECISIONS

ANALYSIS

Commissioner.

—Liability.

—Party in actions involving department.

Commissioner.

—Liability.

While the commissioner is exempt from "individual" liability for acts performed in connection with his duties, if a petition does not seek to hold him individually liable, but seeks to predicate liability upon the commissioner in his official capacity, the statutory

exemption does not shield the commissioner from the allegations contained in the petition. *Employers Ins. v. Commissioner of Dep't of Ins.*, 452 N.E.2d 441 (Ind. App. 1983).

—Party in Actions Involving Department.

Insofar as the commissioner is the representative of the department of insurance, it is only proper that he be named in any cause of action involving the department. *Employers Ins. v. Commissioner of Dep't of Ins.*, 452 N.E.2d 441 (Ind. App. 1983).

27-1-3-2. Prohibited affiliations. — Neither the insurance commissioner, during his term of office, nor any deputy, actuary, securities clerk, examiner or employee shall be directly or indirectly interested in any insurance company, except as an ordinary policyholder. [Acts 1935, ch. 162, § 9, p. 588.]

27-1-3-3. Seal. — The department of insurance shall have an official seal of such design as may be approved by the insurance commissioner. [Acts 1935, ch. 162, § 10, p. 588.]

27-1-3-4. Management of insurance companies. — Every insurance company to which this article is applicable:

- (1) Shall conduct and transact its business in a safe and prudent manner;
- (2) Shall maintain such company in a safe and solvent condition; and
- (3) Shall establish and maintain safe and sound methods for the conduct of such insurance company and its business and prudential affairs. [Acts 1935, ch. 162, § 11, p. 588; P.L.252-1985, § 6.]

27-1-3-5. Certificates, reports and other papers as evidence. — Copies of all certificates, documents, reports, or other papers lawfully received and filed by the department pursuant to this article or any other law of this state, when duly certified by the commissioner or any deputy and authenticated by the official seal of the department, shall be taken and received in all courts and places as prima facie evidence of the facts therein stated, and a certificate from the commissioner under the official seal of the department as to the existence or nonexistence of the facts relating to any insurance company which would not appear from a certified copy of any paper lawfully filed with the department shall be taken and received in all courts and places as prima facie evidence of the existence or nonexistence of the facts therein stated. [Acts 1935, ch. 162, § 12, p. 588; P.L.252-1985, § 7.]

27-1-3-6. Annual report of department. — During December the commissioner shall report to the governor the names of all insurance companies which are in the charge of the department for rehabilitation, liquidation or conservation and such information in regard to those companies as the commissioner may deem pertinent. [Acts 1935, ch. 162, § 13, p. 588; 1979, P.L. 17, § 54.]

27-1-3-7. Rules and regulations. — (a) The department may promulgate rules and regulations for any of the following enumerated purposes:

- (1) For the conduct of the work of the department.
- (2) Prescribing the methods and standards to be used in making the examinations and prescribing the forms of reports of the several insurance companies to which IC 27-1 is applicable.
- (3) Defining what is a safe or an unsafe manner and a safe or an unsafe condition for conducting business by any insurance company to which IC 27-1 is applicable.
- (4) For the establishment of safe and sound methods for the transaction of business by such insurance companies and for the purpose of safeguarding the interests of policyholders, creditors, and shareholders respecting the withdrawal or payment of funds by any life insurance company in times of emergency. Any rule or regulation promulgated under this subdivision may apply to one (1) or more insurance companies as the department may determine.
- (5) For the administration and termination of the affairs of any such insurance company which is in involuntary liquidation or whose business and property have been taken possession of by the department for the purpose of rehabilitation, liquidation, conservation, or dissolution under IC 27-1.
- (6) For the regulation of the solicitation or use of proxies, in general and as they concern consents or authorizations, in respect of securities issued by any domestic stock company for the purpose of protecting investors by prescribing the form of proxies, including such consents or authorizations, and by requiring adequate disclosure of information relevant to such proxies, including such consents or authorizations, and relevant to the business to be transacted at any meeting of shareholders

with respect to which such proxies, including such consents or authorizations, may be used, which regulations may, in general, conform to those prescribed by the National Association of Insurance Commissioners.

(b) The department may adopt a rule under IC 4-22-2 to provide reasonable simplification of the terms and coverage of individual and group Medicare supplement accident and sickness insurance policies and individual and group Medicare supplement subscriber contracts in order to facilitate public understanding and comparison and to eliminate provisions contained in those policies or contracts which may be misleading or confusing in connection either with the purchase of those coverages or with the settlement of claims and to provide for full disclosure in the sale of those coverages. [Acts 1935, ch. 162, § 14, p. 588; 1965, ch. 178, § 1; 1978, P.L. 2, § 2702; 1980, P.L. 168, § 1; 1981, P.L. 233, § 1; 1982, P.L. 159, § 1; P.L.114-1991, § 8.]

Indiana Law Review. A Study of Medical Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

Opinions of Attorney General. The department of insurance has authority under the Indiana Insurance Law to promulgate rules defining a safe or unsafe manner and condition for conducting and transacting business by any insurance company to which the act is applicable. 1939, p. 152.

Any reasonable rule fixing, in the discretion of the department of insurance, limitations as to rates based upon experience as to safe and sound insurance, would be valid. 1939, p. 152.

A concurrent resolution passed by the Indiana General Assembly relative to the authority of the insurance commissioner to adopt

rules and regulations requiring membership of certain insurance companies in the Indiana Basic Property Insurance Underwriting Association as a condition for continued licensing to do business in Indiana was merely an expression of the will and opinion of both houses of the legislature and did not have the force and effect of a duly enacted law. 1980, No. 80-6, p. 20.

The authority of the insurance commissioner to adopt rules and regulations is derived from the Indiana statutes. 1980, No. 80-6, p. 20.

Cited: *Uhlir v. Ritz*, 255 Ind. 342, 23 Ind. Dec. 699, 264 N.E.2d 312 (1970); *Och v. State*, 431 N.E.2d 127 (Ind. App. 1982).

NOTES TO DECISIONS

ANALYSIS

Issuance of license.

Power and authority of commissioner.

Rules and regulations.

Issuance of License.

In the absence of some special statutory authority, injunction will not lie to control or review the exercise of the discretion of the commissioner in the issuance of licenses unless it clearly appears that he has abused such discretion. *Department of Ins. v. MIC*, 236 Ind. 1, 138 N.E.2d 157 (1956).

Power and Authority of Commissioner.

Insurance commissioner derives his power and authority solely from the statute, and unless a grant of power can be found in the

statute he can exercise none. *Department of Ins. v. MIC*, 236 Ind. 1, 138 N.E.2d 157 (1956).

Rules and Regulations.

Where the insurance commissioner, by regulation, attempted to exclude all automobile dealer agencies from securing licenses as agents and solicitors of insurance, he acted not only without statutory authority, but such regulation was unlawful as being in violation of the Constitution of Indiana. *Department of Ins. v. MIC*, 236 Ind. 1, 138 N.E.2d 157 (1956).

Statutory authority permitting department of insurance to issue rules and regulations concerning transaction of business by insurance companies does not include right of arbitrary exclusion of a class of persons because they may already be engaged in another lawful occupation or business. *Department of Ins. v. MIC*, 236 Ind. 1, 138 N.E.2d 157 (1956).

27-1-3-8, 27-1-3-9. [Repealed.]

Compiler's Notes. These sections, concerning examinations into affairs of insurance companies, hearings on such examinations, notice of hearing, and report, and concerning the frequency of examinations into the affairs

of insurance companies, were repealed by P.L.26-1991, § 28, effective July 1, 1991. For present law on examinations, hearings, notice, and report, see IC 27-1-3.1-8 through IC 27-1-3.1-10.

27-1-3-10. Revocation or suspension of authority. — The commissioner shall have power:

- (1) To revoke or suspend the authority to do business in this state of any company which refuses to permit an examination under IC 27-1-3.1; and
- (2) To revoke or suspend any certificate of authority when any condition prescribed by law for granting it no longer exists. [Acts 1935, ch. 162, § 17, p. 588; P.L.26-1991, § 3.]

Indiana Law Review. A Study of Medical Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

Cited: State Farm Mut. Auto. Ins. Co. v. Mortell, 667 N.E.2d 192 (Ind. App. 1996).

27-1-3-10.5. Disclosure of certain information prohibited. — (a) As used in this section, "confidential information" means information that has been designated as confidential by statute, rule, or regulation issued under a statute.

(b) The commissioner may not:

- (1) Disclose; or
- (2) Subject to subpoena;

financial information regarding material transactions disclosed by an insurer under IC 27-2-18.

(c) The commissioner may not disclose any information, including any document or report received from:

- (1) The National Association of Insurance Commissioners; or
- (2) An insurance department of another state;

if the information is designated as confidential information in the other jurisdiction.

(d) The commissioner may share confidential information with:

- (1) The National Association of Insurance Commissioners; or
- (2) An insurance department of another state;

on the condition that the National Association of Insurance Commissioners and the other state agree to maintain the same level of confidentiality that is provided to the information under Indiana law. [P.L.251-1995, § 1.]

27-1-3-11. Disclosure of information. — (a) The commissioner or any deputy, actuary, assistant, examiner, or employee or any other person having access to any information obtained through an examination conducted under IC 27-1-3.1 may not disclose to any person, other than officially to the department, by the report made to it, or to the board of directors, trustees, partners, attorney-in-fact, or owners, or in compliance with an order of a court, any information concerning the affairs of any insurance company as shown by the report of the examination of such

company by the department. However, this prohibition against disclosure does not apply after the report of the examiners has been submitted to the department and the department has in turn submitted the report with its recommendations, if any, to the board of directors, trustees, partners, attorney-in-fact, or owners.

(b) This section does not prohibit the publication by any company of the facts contained in its own examination. [Acts 1935, ch. 162, § 18, p. 588; 1969, ch. 164, § 6; 1978, P.L. 2, § 2703; P.L.17-1984, § 7; P.L.159-1986, § 1; P.L.26-1991, § 4.]

Cross References. Penalty for disclosure of protected information, IC 5-14-3-10.

NOTES TO DECISIONS

Effect on Truth as Defense for Defamation.

IC 27-1-3-11 and IC 27-9-2-3 have not effectively eliminated the affirmative defense of truth to an action for defamation since the sections are applicable only in instances when an insurer is subjected to an "examination" or

delinquency proceeding and have no relation to a private cause of action between insurers. *Gibraltar Mut. Ins. Co. v. Hoosier Ins. Co.*, 486 N.E.2d 548 (Ind. App. 1985), modified on reh'g to clarify a statement regarding guaranty associations, 489 N.E.2d 592 (Ind. App. 1986).

27-1-3-12. Examination by commissioners' convention. — The department may in its discretion accept any examination of any insurance company made by the commissioners' convention or by the proper authority of the state in which a foreign or alien company is domiciled in lieu of the examination made under the provisions of this article. [Acts 1935, ch. 162, § 19, p. 588; P.L.252-1985, § 9.]

Cross References. Examination by insurance department, IC 27-1-3.1-8 — IC 27-1-3.1-10.

27-1-3-13. Form of annual statement — Compensation information filed separately. — (a) Each company authorized to conduct business in Indiana and required to file an annual statement with the department under IC 27-1-20-21 shall submit the company's statement on the National Association of Insurance Commissioners (NAIC) Annual Statement Blank prepared in accordance with NAIC Annual Statement Instructions, and following practices and procedures prescribed by the most recent NAIC Accounting Practices and Procedures Manual.

(b) To the extent that the NAIC Annual Statement Instructions require disclosure under subsection (a) of compensation paid to or on behalf of an insurer's officers, directors, or employees, the information may be filed with the department as an exhibit separate from the annual statement blank. The compensation information described under this subsection shall be maintained by the department as confidential and may not be made public. [Acts 1935, ch. 162, § 20, p. 588; 1963, ch. 154, § 1; P.L.116-1994, § 5; P.L.130-1994, § 1; P.L.251-1995, § 2.]

Cross References. Annual statement, IC 27-1-20-21.

27-1-3-14. Notice of insolvency or suspension — Penalty. — If any domestic insurance company is insolvent, or in imminent danger of insolvency, or fails or suspends operation between the periods of examination authorized, it is a Class B misdemeanor for the highest officer then actively in charge of such domestic insurance company to knowingly fail to notify the department immediately, of such condition, failure, or suspension. [Acts 1935, ch. 162, § 21, p. 588; 1978, P.L. 2, § 2704.]

Cross References. Claims of insurance guaranty association, IC 27-6-8-10.
Guaranty association, duties to prevent insolvency, IC 27-6-8-12.
Insolvent insurer, examination of records of board, IC 27-6-8-18.
Life and health insurance guaranty association, IC 27-8-8.
Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

Collateral References. Primary insurer's insolvency as affecting excess insurer's liability. 85 A.L.R.4th 729.
Liability of insurance agent or broker for placing insurance with insolvent carrier. 42 A.L.R.5th 199.
Liability of insurance agent or broker on ground of inadequacy of liability-insurance coverage procured. 60 A.L.R.5th 165 .

27-1-3-15. Fees and charges. — (a) Except as provided in subsection (g), the commissioner shall collect the following filing fees:

Document	Fee
Articles of incorporation	\$350
Amendment of articles of incorporation	\$ 10
Filing of annual statement and consolidated statement.....	\$100
Annual renewal of company license fee.....	\$ 50
Withdrawal of certificate of authority	\$ 25
Certified statement of condition.....	\$ 5
Any other document required to be filed by this article	\$ 25

(b) The commissioner shall collect a fee of ten dollars (\$10) each time process is served on the commissioner under this title.

(c) The commissioner shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

Per page for copying	As determined by the commissioner but not to exceed actual cost
For the certificate	\$10

(d) Each domestic and foreign insurer shall remit annually to the commissioner for deposit into the department of insurance fund established by IC 27-1-3-28 three hundred fifty dollars (\$350) as an internal audit fee. All assessment insurers, farm mutuals, fraternal benefit societies, and health maintenance organizations shall remit to the commissioner for deposit into the department of insurance fund one hundred dollars (\$100) annually as an internal audit fee.

(e) Beginning July 1, 1994, each insurer shall remit to the commissioner for deposit into the department of insurance fund established by IC

27-1-3-28 a fee of thirty-five dollars (\$35) for each policy, rider, and endorsement filed with the state. However, each policy, rider, and endorsement filed as part of a particular product filing and associated with that product filing shall be considered to be a single filing and subject only to one (1) thirty-five dollar (\$35) fee.

(f) The commissioner shall pay into the state general fund by the end of each calendar month the amounts collected during that month under subsections (a), (b), and (c).

(g) The commissioner may not collect fees for quarterly statements filed under IC 27-1-20-33. [Acts 1935, ch. 162, § 22, p. 588; P.L.31-1988, § 9; P.L.116-1994, § 6; P.L.130-1994, § 2; P.L.91-1998, § 3; P.L.268-1999, § 1.]

Compiler's Notes. P.L.268-1999, § 22, subsection (a), effective July 1, 1999, provides that this section, as amended by P.L.268-1999, applies "upon receipt by the commissioner of the department of insurance of the designation from the insurer of an agent for service of process." P.L.268-1999, § 22, subsection (b), provides that P.L.268-1999, § 22, expires June 30, 2004.

Cross References. Fees of secretary of state, IC 27-1-20-13.

Fees payable by all domestic corporations to secretary of state, IC 23-1-18-3.

Organization of domestic insurance companies, IC 27-1-6.

27-1-3-16. Taxes and fees paid into state treasury — Expenses of administration of article paid from general fund. — All taxes provided by this article and all fees accruing to the department as provided in this article shall be paid into the state treasury monthly. All expenses incurred and all compensation paid by the department in the administration of this article shall be paid out of the general fund, in the same manner as other state expense and compensation are paid. [Acts 1935, ch. 162, § 23, p. 588; P.L.252-1985, § 10.]

Indiana Law Journal. Consumer Warranty or Insurance Contract? A View Towards

a Rational State Regulatory Policy, 51 Ind. L.J. 1103.

27-1-3-17. [Repealed.]

Compiler's Notes. This section, relating to the transfer of powers from the insurance

department, was repealed by P.L.4-1988, § 17, effective July 1, 1988.

27-1-3-18. Solicitation of political contributions — Penalty. — It is a Class A misdemeanor for a person to knowingly solicit from any officer or employee of the department any money or other property for political assessments or contributions. [Acts 1935, ch. 162, § 25, p. 588; 1978, P.L. 2, § 2705, p. 2.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

Collateral References. Validity, construc-

tion, and effect of state statutes restricting political activities of public officers or employees. 51 A.L.R.4th 702.

27-1-3-19. Illegal or unsafe practices. — (a) Whenever the commissioner determines that any insurance company to which this article is applicable:

- (1) Is conducting its business contrary to law or in an unsafe or unauthorized manner;
- (2) Has had its capital or surplus fund impaired or reduced below the amount required by law; or
- (3) Has failed, neglected, or refused to observe and comply with any order or rule of the department or commissioner;

then the commissioner may, by an order in writing addressed to the board of directors, board of trustees, attorney in fact, partners, or owners of or in any such insurance company, to direct the discontinuance of any such illegal, unauthorized, or unsafe practice, the restoration of an impairment to the capital or the surplus fund, or the compliance with any such law, order, or rule of the department or commissioner. The order shall be mailed to the last known principal office of the insurance company by certified or registered mail or delivered to an officer of the company and shall be considered to be received by the insurance company three (3) days after mailing or on the date of delivery.

(b) If the insurance company fails, neglects, or refuses to comply with the terms of that order within thirty (30) days after its receipt by the insurance company, or within a shorter period set out in the order if the commissioner determines that an emergency exists, the commissioner may, in addition to any other remedy conferred upon the department or the commissioner by law, bring an action against any such insurance company, its officers, and agents to compel that compliance.

(c) The action shall be brought by the commissioner in the Marion County circuit court. The action shall be commenced and prosecuted in accordance with the Indiana Rules of Trial Procedure, and relief for noncompliance of the order includes any remedy appropriate under the facts, including injunction, preliminary injunction, and temporary restraining order. In that action, a change of venue from the judge, but no change of venue from the county, is permitted. [Acts 1935, ch. 162, § 26, p. 588; P.L.252-1985, § 12; P.L.31-1988, § 10.]

Cross References. Life and health insurance guaranty association, IC 27-8-8.

Indiana Law Review. A Study of Medical Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

Cited: State ex rel. Great Fid. Life Ins. Co. v. Circuit Court, 259 Ind. 441, 33 Ind. Dec. 168, 288 N.E.2d 143 (1972); State Farm Mut. Auto. Ins. Co. v. Mortell, 667 N.E.2d 192 (Ind. App. 1996).

27-1-3-20. Certificate of authority — Issuance to companies — Notification by company of election or appointment of new directors — Prerequisite to transacting business — Penalty. — (a) The commissioner may issue a certificate of authority to any company when it shall have complied with the requirements of the laws of this state so as to entitle it to do business herein. The certificate shall be issued under the seal of the department authorizing and empowering the company to make the kind or kinds of insurance specified in the certificate. No certificate of authority shall be issued until the commissioner has found that:

- (1) the company has submitted a sound plan of operation; and
- (2) the general character and experience of the incorporators, directors, and proposed officers is such as to assure reasonable promise of a

successful operation, based on the fact that such persons are of known good character and that there is no good reason to believe that they are affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with any person or persons known to have been involved in the improper manipulation of assets, accounts, or reinsurance.

No certificate of authority shall be denied, however, under subdivision (1) or (2) until notice, hearing, and right of appeal has been given as provided in IC 4-21.5.

(b) Every company possessing a certificate of authority shall notify the commissioner of the election or appointment of every new director or principal officer, within thirty (30) days thereafter. If in the commissioner's opinion such a new principal officer or director does not meet the standards set forth in this section, he shall request that the company effect the removal of such persons from office. If such removal is not accomplished as promptly as under the circumstances and in the opinion of the commissioner is possible, then upon notice to both the company and such principal officer or director and after notice, hearing, and right of appeal pursuant to IC 4-21.5, and after a finding that such person is incompetent or untrustworthy or of known bad character, the commissioner may order the removal of such person from office and may, unless such removal is promptly accomplished, suspend the company's certificate of authority until there is compliance with such order.

(c) No company shall transact any business of insurance or hold itself out as a company in the business of insurance in Indiana until it shall have received a certificate of authority as prescribed in this section.

(d) No company shall make, issue, deliver, sell, or advertise any kind or kinds of insurance not specified in the company's certificate of authority.

(e) Notwithstanding IC 27-1-2-4, a director or officer of a company who knowingly, intentionally, or recklessly violates subsection (c) or (d) commits a Class D felony.

(f) The commissioner shall impose a civil penalty of not more than twenty-five thousand dollars (\$25,000) on a director or officer of a company that violates subsection (c) or (d). The amount imposed must be proportionate to the costs incurred by the department of insurance, other governmental entities, and the courts in regulating the activity of the director, officer, or company who violates subsection (c) or (d). A civil penalty imposed under this subsection may be enforced in the same manner as a civil judgment. [Acts 1935, ch. 162, § 27, p. 588; 1967, ch. 127, § 1; 1975, P.L. 278, § 1; P.L.7-1987, § 135; P.L.67-1998, § 1.]

Cross References. Issuance of amended certificate of authority, IC 27-1-8-1.

Issuance of certificate of authority, IC 27-1-6-18.

Penalties for felonies, IC 35-50-1, IC 35-50-2, IC 35-50-5-2.

Opinions of Attorney General. Section 27 of the Indiana Insurance Law (this section) as passed in 1935 is applicable to assessment companies organized under ch. 195 of the Acts

of 1897 to do insurance business on assessment plan, and they must apply each year for a certificate of authority, authorizing and empowering them to make the kind or kinds of insurance specified in the certificate. 1953, No. 13, p. 51.

The writing of dependency coverage in group life insurance is prohibited by the statute authorizing the writing of group life insurance coverage. 1953, No. 32, p. 149.

Cited: Eakin v. Indiana Intergovernmental 1990); Board of Trustees v. Collins, 665 Risk Mgt. Auth., 557 N.E.2d 1095 (Ind. App. N.E.2d 952 (Ind. App. 1996).

27-1-3-21. Execution of instruments by insurance department. —

All rules, regulations, notices, orders, deeds, assignments and other instruments or documents issued, executed or promulgated by the department shall be executed in the name of “the department of insurance,” on its behalf, by the insurance commissioner, or, in case of his absence or disability, by a deputy insurance commissioner, and shall be sealed with the official seal of the department; but the commissioner may authorize the execution of such deeds, assignments, releases, petitions, notices or any other instruments or documents issued or executed by the department in connection with the rehabilitation, liquidation or conservation of any insurance company by such department in the name of “the department of insurance,” by any special deputy commissioner duly appointed in charge of rehabilitation, liquidation or conservation of any insurance company; and all such documents so executed by the special deputy insurance commissioner need not bear the official seal of the department. [Acts 1935, ch. 162, § 28, p. 588.]

27-1-3-22. Immunity from liability for reporting suspected fraudulent insurance acts. — (a) As used in this section, “fraudulent insurance act” means:

(1) The preparation or presentation of a written statement as part of, or in support of:

(A) A fraudulent application for the issuance or rating of a policy of commercial insurance; or

(B) A fraudulent claim under a policy of commercial or personal insurance; or

(2) The concealment, for the purpose of misleading, of information concerning any fact material to an application or claim described in subdivision (1).

(b) As used in this section, “fraudulent insurance act” includes the act or omission of a person who, knowingly and with intent to defraud, does any of the following:

(1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, a reinsurer, a purported insurer or reinsurer, a broker, or an agent of an insurer, reinsurer, purported insurer or reinsurer, or broker, an oral or written statement that the person knows to contain materially false information as part of, in support of, or concerning any fact that is material to:

(A) An application for the issuance of an insurance policy;

(B) The rating of an insurance policy;

(C) A claim for payment or benefit under an insurance policy;

(D) Premiums paid on an insurance policy;

(E) Payments made in accordance with the terms of an insurance policy;

(F) An application for a certificate of authority;

(G) The financial condition of an insurer, a reinsurer, or a purported insurer or reinsurer; or

(H) The acquisition of an insurer or a reinsurer; or conceals any information concerning a subject set forth in clauses (A) through (H).

(2) Solicits or accepts new or renewal insurance risks by or for an insolvent insurer, reinsurer, or other entity regulated under this title.

(3) Removes or attempts to remove:

(A) The assets;

(B) The record of assets, transactions, and affairs; or

(C) A material part of the assets or the record of assets, transactions, and affairs;

of an insurer, a reinsurer, or another entity regulated under this title, from the home office, other place of business, or place of safekeeping of the insurer, reinsurer, or other regulated entity, or conceals or attempts to conceal from the department assets or records referred to in clauses (A) through (C).

(4) Diverts, attempts to divert, or conspires to divert funds of an insurer, a reinsurer, another entity regulated under the Indiana Code, or other persons, in connection with any of the following:

(A) The transaction of insurance or reinsurance.

(B) The conduct of business activities by an insurer, a reinsurer, or another entity regulated under this title.

(C) The formation, acquisition, or dissolution of an insurer, a reinsurer, or another entity regulated under this title.

(c) A person who acts without malice, fraudulent intent, or bad faith is not subject to civil liability for filing a report or furnishing, orally or in writing, other information concerning a suspected, anticipated, or completed fraudulent insurance act if the report or other information is provided to or received from any of the following:

(1) The department or an agent, an employee, or a designee of the department.

(2) Law enforcement officials or an agent or employee of a law enforcement official.

(3) The National Association of Insurance Commissioners.

(4) Any agency or bureau of federal or state government established to detect and prevent fraudulent insurance acts.

(5) Any other organization established to detect and prevent fraudulent insurance acts.

(6) An agent, an employee, or a designee of an entity referred to in subdivisions (3) through (5).

(d) This section does not abrogate or modify in any way any common law or statutory privilege or immunity. [P.L.159-1986, § 2; P.L.121-1992, § 1.]

27-1-3-23. Recovery of attorney's fees. — (a) For the purposes of this section, a party is "substantially justified" in initiating a civil action if the action had a reasonable basis in law or fact at the time the action was initiated.

(b) If:

(1) A person or entity referred to in section 22(c) [IC 27-1-3-22(c)] of this chapter, or an employee or agent of a person or entity referred to in

section 22(c), is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of the filing of a report or the furnishing of information under section 22(c) of this chapter; and

(2) The party who initiated the action was not substantially justified in initiating the action;

the person, entity, employee, or agent referred to in subdivision (1) is entitled to an award of attorney's fees and costs. [P.L.121-1992, § 2.]

27-1-3-24. Payment of dividend from source other than earned surplus. — (a) As used in this section, "earned surplus" means an amount equal to the unassigned funds of an insurer as set forth in the most recent annual statement of the insurer that is submitted to the commissioner, excluding surplus arising from unrealized capital gains or revaluation of assets.

(b) A domestic insurer may not:

(1) Declare; or

(2) Pay;

a dividend from any source of money other than earned surplus unless the commissioner approves the payment of the dividend before the dividend is paid. [P.L.116-1194, § 7; P.L.130-1994, § 3.]

27-1-3-25. Review of dividends. — The department shall establish and maintain a procedure under which the department, at least one (1) time each year, reviews the ordinary shareholder dividends paid by each domestic insurer to determine whether dividends paid by the insurer are reasonable in relation to the following:

(1) The adequacy of the level of surplus as regards policyholders of the insurer remaining after the payment of dividends.

(2) The quality of the earnings of the insurer and the extent to which the reported earnings of the insurer include extraordinary items, such as surplus relief, reinsurance transactions, and reserve destrengthening. [P.L.116-1194, § 8; P.L.130-1994, § 4.]

27-1-3-26. Order to limit — Inadequate surplus. — The department shall establish and follow a practice under which the department issues an order to a domestic insurer to limit the payment of ordinary shareholder dividends by the insurer if the department determines that the surplus of the insurer as regards policyholders:

(1) Is not reasonable in relation to the outstanding liabilities of the insurer; and

(2) Is not adequate to the financial needs of the insurer.

[P.L.116-1194, § 9; P.L.130-1994, § 5.]

27-1-3-27. Order to limit dividends — Financially distressed insurer. — The department shall establish and follow a practice under which the department issues an order to limit or disallow the payment of ordinary shareholder dividends by a domestic insurer if the domestic insurer is found to be financially distressed or troubled. [P.L.116-1194, § 10; P.L.130-1994, § 6.]

27-1-3-28. Department of insurance fund established. — (a) The department of insurance fund is established for the following purposes:

- (1) To provide supplemental funding for the operations of the department of insurance.
 - (2) To pay the costs of hiring and employing staff.
 - (3) To provide staff salary differentials as necessary to equalize the average salaries and staffing levels of the department of insurance with the average salaries and staffing levels reported in the most recent Insurance Department Resources Report published by the National Association of Insurance Commissioners.
 - (4) To enable the department of insurance to maintain accreditation by the National Association of Insurance Commissioners.
- (b) The fund shall be administered by the commissioner. The following shall be deposited in the department of insurance fund:
- (1) Audit fees remitted by insurers to the commissioner under IC 27-1-3-15(d).
 - (2) Filing fees remitted by insurers to the commissioner under IC 27-1-3-15(e).
 - (3) Any other amounts remitted to the commissioner or the department that are required by rule or statute to be deposited into the department of insurance fund.
- (c) The expenses of administering the fund shall be paid from money in the fund.
- (d) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.
- (e) Money in the fund at the end of a particular fiscal year does not revert to the state general fund.
- (f) There is annually appropriated to the department of insurance, for the purposes set forth in subsection (a), the entire amount of money deposited in the fund in each year. [P.L.116-1194, § 11; P.L.130-1994, § 7; P.L.252-1995, § 1; P.L.91-1998, § 4.]

Compiler's Notes. Although this section was not amended by P.L.268-1999, P.L.268-1999, § 22, effective July 1, 1999, provides: "(a) IC 27-1-3-15, IC 27-1-3-28, IC 27-1-15.5-4, IC 27-1-17-4, IC 27-1-20-21.3, IC 27-1-27-5, IC 27-6-6-4, IC 27-7-2-24, IC 27-8-1-13, IC

27-8-3-19, IC 27-8-3-20, and IC 27-11-9-1, all as amended by this act, apply upon receipt by the commissioner of the department of insurance of the designation from the insurer of an agent for service of process.

"(b) This SECTION expires June 30, 2004."

27-1-3-29. Enforceability of policy exceeding insurer's authority — Enforceability of policy in violation of statute or rule — Reformation of policy. — (a) Except as otherwise provided by statute, a policy is enforceable against the insurer according to its terms, even if the policy exceeds the authority of the insurer.

(b) A policy that violates a statute or rule is enforceable against the insurer as if the policy conformed to the statute or rule.

(c) Upon the written request of the policyholder or the insured whose rights under the policy are continuing and not transitory, an insurer shall

reform and reissue its written policy to comply with the requirements of the law existing at the date of issue or last renewal of the policy. [P.L.268-1999, § 2.]

CHAPTER 3.1

EXAMINATIONS

SECTION.

- 27-1-3.1-1. "Commissioner" defined.
- 27-1-3.1-2. "Company" defined.
- 27-1-3.1-3. "Department" defined.
- 27-1-3.1-4. "Examiner" defined.
- 27-1-3.1-5. "Insurer" defined.
- 27-1-3.1-6. "NAIC examiner's handbook" defined.
- 27-1-3.1-7. "Person" defined.
- 27-1-3.1-8. Examination by commissioner — Frequency of examination — Factors to be considered — Foreign insurer licensed in Indiana.
- 27-1-3.1-9. Examination warrant — Access to records — Penalty for denial of access — Commissioner authority.
- 27-1-3.1-10. Examination reports — Filing of written report.
- 27-1-3.1-11. Review of report by commissioner — Authorized acts of

SECTION.

- commissioner when violation found.
- 27-1-3.1-12. Findings and conclusions to accompany orders — Service of order — Hearing.
- 27-1-3.1-13. Hearing procedure.
- 27-1-3.1-14. Examination report to be held confidential — Disclosure of report contents by commissioner.
- 27-1-3.1-15. Confidential information not subject to subpoena.
- 27-1-3.1-16. Appointment of examiner by commissioner — Conflict of interest — Appointment of personnel by commissioner on individual basis.
- 27-1-3.1-17. Immunity from liability.
- 27-1-3.1-18. Financial analysis ratios — Examination synopses.

27-1-3.1-1. "Commissioner" defined. — As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2. [P.L.26-1991, § 5.]

27-1-3.1-2. "Company" defined. — As used in this chapter, "company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory, or taxing authority of the commissioner. [P.L.26-1991, § 5.]

27-1-3.1-3. "Department" defined. — As used in this chapter, "department" refers to the department of insurance of Indiana. [P.L.26-1991, § 5.]

27-1-3.1-4. "Examiner" defined. — As used in this chapter, "examiner" means any individual or firm authorized by the commissioner to conduct an examination under this chapter. [P.L.26-1991, § 5.]

27-1-3.1-5. "Insurer" defined. — As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3. [P.L.26-1991, § 5.]

27-1-3.1-6. "NAIC examiner's handbook" defined. — As used in this chapter, "NAIC examiner's handbook" means the Examiners' Handbook adopted by the National Association of Insurance Commissioners. [P.L.26-1991, § 5.]

27-1-3.1-7. "Person" defined. — As used in this chapter, "person" means any individual, aggregation of individuals, trust, association, partnership, limited liability company, or corporation, or any affiliate of these entities. [P.L.26-1991, § 5; P.L.8-1993, § 410.]

27-1-3.1-8. Examination by commissioner — Frequency of examination — Factors to be considered — Foreign insurer licensed in Indiana. — (a) The commissioner or any of the commissioner's examiners:

- (1) May conduct an examination under this chapter of any company as often as the commissioner, in the commissioner's sole discretion, considers appropriate; and
- (2) Shall, at a minimum, conduct an examination of every insurer licensed in Indiana at least once every five (5) years.

(b) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC examiner's handbook.

(c) For purposes of completing an examination of any company under this chapter, the commissioner may examine or investigate any person, or the business of any person, in so far as such examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

(d) In lieu of an examination under this chapter of any foreign or alien insurer licensed in Indiana, the commissioner may accept an examination report on such company as prepared by the insurance department of the company's state of domicile or port-of-entry state until January 1, 1994. After January 1, 1994, those reports may only be accepted if:

- (1) The insurance department that prepared the report was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or
- (2) The examination is performed with the participation of one (1) or more examiners who are employed by an accredited State Insurance Department and who after a review of the examination work papers and report state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department. [P.L.26-1991, § 5; P.L.1-1992, § 144.]

Cross References. Abstract and title insurance company examinations, IC 27-7-3-13. Examination by commissioners' convention as alternative, IC 27-1-3-12.

Indiana Law Journal. Consumer Warranty or Insurance Contract? A View Towards a Rational State Regulatory Policy, 51 Ind. L.J. 1103.

Opinions of Attorney General. Insurance department may charge for the expense of the examination of the books of corporate general agencies of life insurance companies. 1943, p. 667.

27-1-3.1-9. Examination warrant — Access to records — Penalty for denial of access — Commissioner authority. — (a) Upon determin-

ing that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the NAIC examiner's handbook. The commissioner may also employ such other guidelines or procedures as the commissioner considers appropriate.

(b) Every company or person from whom information is sought, and the officers, directors, and agents of the company or person, must provide to the examiners appointed under subsection (a) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents within the company's control, to submit to examination or to comply with any reasonable written request of the examiners, or the failure of any company to make a good faith effort to require compliance with such a request, is grounds for:

- (1) Suspension;
- (2) Refusal; or
- (3) Nonrenewal;

of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. The commissioner may proceed to suspend or revoke a license or authority upon the grounds set forth in this subsection under IC 27-1-3-10 or IC 27-1-3-19.

(c) The commissioner and the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to an examination conducted under this chapter. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(d) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining these examiners shall be borne by the company that is the subject of the examination.

(e) This chapter does not limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action. [P.L.26-1991, § 5; P.L.116-1994, § 12; P.L.130-1994, § 8.]

27-1-3.1-10. Examination reports — Filing of written report. —

(a) All examination reports shall be comprised of only:

(1) Facts:

(A) Appearing upon the books, records, or other documents of the company; and

(B) Ascertained from the agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning the affairs of the company; and

(2) Conclusions and recommendations that the examiners find reasonably warranted from those facts.

(b) No more than sixty (60) days after the completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that affords such company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report. The thirty (30) day period may be extended if the commissioner, in the commissioner's sole discretion, determines that an extension is appropriate or necessary. [P.L.26-1991, § 5; P.L.116-1994, § 13; P.L.130-1994, § 9.]

Cited: State Farm Mut. Auto. Ins. Co. v. Mortell, 667 N.E.2d 192 (Ind. App. 1996).

27-1-3.1-11. Review of report by commissioner — Authorized acts of commissioner when violation found. —

(a) Within thirty (30) days after the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and enter an order:

(1) Adopting the examination report as filed or with modification or corrections;

(2) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile the report under this chapter; or

(3) Calling for an investigatory hearing with no less than twenty (20) days notice to the company for purposes of obtaining additional documentation, data, information and testimony.

(b) If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure that violation. [P.L.26-1991, § 5.]

NOTES TO DECISIONS**ANALYSIS**

Curative measures.
Procedure.

Curative Measures.

Department of insurance clearly did not act outside of its statutory authority when it

ordered insurer to immediately comply with the reimbursement statute, IC 27-8-6-1, to adopt written guidelines for the review of claims involving chiropractic services and to comply with enumerated terms with regard to its training methods; subsection (b) of this section empowers the insurance commissioner to order a company found in violation of law to enact appropriate curative measures. *State Farm Mut. Auto. Ins. Co. v. Mortell*, 667 N.E.2d 192 (Ind. App. 1996).

Procedure.

Department of insurance was not required to afford insurance company the rights provided in the Unfair Competition & Deceptive

Trade Practices Act, IC 27-4-1 et seq., nor was insurance company entitled to an adjudicatory hearing pursuant to the Administrative Orders and Procedure Act, IC 4-21.5 et seq.; department of insurance was permitted to proceed under the authority of the examination statute, IC 27-1-3.1-1 et seq., where the hearing was conducted under subsection (a)(3) of this section, followed the letter of IC 27-1-3.1-12 and the commissioner then proceeded under subsection (b) of this section to cure the violations revealed by the market conduct examination and clarified during the investigative hearing. *State Farm Mut. Auto. Ins. Co. v. Mortell*, 667 N.E.2d 192 (Ind. App. 1996).

27-1-3.1-12. Findings and conclusions to accompany orders — Service of order — Hearing. — (a) All orders entered under section 11(a) [IC 27-1-3.1-11(a)] of this chapter shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals.

(b) Any order entered under section 11(a) of this chapter shall be considered a final administrative decision that may be appealed under IC 4-21.5-5, and shall be served upon the company by certified mail, together with the copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file an affidavit stating that each director has received a copy of the adopted report and related orders.

(c) Any hearing conducted under section 11(a)(3) [IC 27-1-3.1-11(a)(3)] of this chapter by the commissioner or an authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of the hearing, the commissioner shall enter an order under section 11 [IC 27-1-3.1-11] of this chapter. [P.L.26-1991, § 5; P.L.116-1994, § 14; P.L.130-1994, § 10.]

NOTES TO DECISIONS

ANALYSIS

Curative measures.
Due process.
Procedure.

Curative Measures.

Department of insurance clearly did not act outside of its statutory authority when it ordered insurer to immediately comply with the reimbursement statute, IC 27-8-6-1, to adopt written guidelines for the review of claims involving chiropractic services and to

comply with enumerated terms with regard to its training methods; IC 27-1-3.1-11(b) empowers the commissioner to order a company found in violation of law to enact appropriate curative measures. *State Farm Mut. Auto. Ins. Co. v. Mortell*, 667 N.E.2d 192 (Ind. App. 1996).

Due Process.

Insurance company was not denied its due process rights, because it was afforded its full complement of rights, including the right to judicial review of administrative orders, un-

Due Process. (Cont'd)

der this section. *State Farm Mut. Auto. Ins. Co. v. Mortell*, 667 N.E.2d 192 (Ind. App. 1996).

Procedure.

Department of insurance was not required to afford insurance company the rights provided in the Unfair Competition & Deceptive Trade Practices Act, IC 27-4-1 et seq., nor was insurance company entitled to an adjudicatory hearing pursuant to the Administrative Orders and Procedure Act, IC 4-21.5 et seq.;

the department of insurance was permitted to proceed under the authority of the examination statute, IC 27-1-3.1-1 et seq., where the hearing was conducted under IC 27-1-3.1-11(a)(3) followed the letter of this section of the examination statute and the commissioner then proceeded under IC 27-1-3.1-11(b) to cure the violations revealed by the market conduct examination and clarified during the investigative hearing. *State Farm Mut. Auto. Ins. Co. v. Mortell*, 667 N.E.2d 192 (Ind. App. 1996).

27-1-3.1-13. Hearing procedure. — (a) The commissioner may not appoint an examiner as authorized representative to conduct a hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record.

(b) This section does not require the department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(c) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. The commissioner, the department, and the company may cross-examine witnesses. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice. [P.L.26-1991, § 5; P.L.116-1994, § 15; P.L.130-1994, § 11.]

Cited: *State Farm Mut. Auto. Ins. Co. v. Mortell*, 667 N.E.2d 192 (Ind. App. 1996).

27-1-3.1-14. Examination report to be held confidential — Disclosure of report contents by commissioner. — (a) Upon the adoption of an examination report under section 11(a)(1) [IC 27-1-3.1-11(a)(1)] of this chapter, the commissioner shall continue to hold the content of the examination report as confidential information for a period of thirty (30) days except to the extent provided in section 10(b) [IC 27-1-3.1-10(b)] of this chapter. Thereafter, the report shall be open for public inspection.

(b) This chapter does not prevent or prohibit the commissioner from disclosing the content of an examination report, preliminary examination report, or results, or any matter relating thereto, to the insurance department of any other state or country, or to law enforcement officials of Indiana or any other state or agency of the federal government at any time, if the

agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions authorized by law.

(d) This chapter does not limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may, in the commissioner's sole discretion, consider appropriate. [P.L.26-1991, § 5; P.L.116-1994, § 16; P.L.130-1994, § 12.]

27-1-3.1-15. Confidential information not subject to subpoena. —

All working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination under this chapter are confidential for the purposes of IC 5-14-3-4, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in section 14 [IC 27-1-3.1-14] of this chapter. However, access may also be granted to the National Association of Insurance Commissioners. Those parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained. [P.L.26-1991, § 5.]

27-1-3.1-16. Appointment of examiner by commissioner — Conflict of interest — Appointment of personnel by commissioner on individual basis. — (a) No examiner may be appointed by the commissioner if that examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. However, this section does not automatically preclude an examiner from being:

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

(b) Notwithstanding the requirements of this section, the commissioner may periodically retain on an individual basis qualified actuaries, certified public accountants, and other similar individuals who are independently practicing their professions, even though those persons may from time to time be similarly employed or retained by persons subject to examination under this chapter. [P.L.26-1991, § 5.]

27-1-3.1-17. Immunity from liability. — (a) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

(b) No cause of action may arise, and no liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if that act of communication or delivery is performed in good faith and without fraudulent intent or the intent to deceive.

(c) This section does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in subsection (a).

(d) A person identified in subsection (a) is entitled to an award of attorney's fees and costs if that person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of that person's activities in carrying out the provisions of this chapter and if the court finds the action was frivolous, unreasonable, groundless, or litigated in bad faith. [P.L.26-1991, § 5.]

27-1-3.1-18. Financial analysis ratios — Examination synopses. —

(a) The commissioner shall provide any financial analysis ratios computed by the Insurance Regulatory Information System of the National Association of Insurance Commissioners within five (5) business days after receiving a written request for those ratios.

(b) All examination synopses concerning insurance companies that are submitted to the department by the Insurance Regulatory Information System of the National Association of Insurance Commissioners are confidential and may not be disclosed by the department. [P.L.26-1991, § 5.]

CHAPTER 3.5

ANNUAL AUDITED FINANCIAL REPORTS

SECTION.

- 27-1-3.5-1. "Commissioner" defined.
- 27-1-3.5-2. "Domestic insurer" defined.
- 27-1-3.5-3. "Independent auditor" defined.
- 27-1-3.5-3.5. "Significant deficiency" defined.
- 27-1-3.5-4. "Work papers" defined.
- 27-1-3.5-5. Applicability of chapter.
- 27-1-3.5-6. Time for filing report.
- 27-1-3.5-7. Contents of report.
- 27-1-3.5-8. Registration of independent auditor — Requirements when auditor did not audit most recent financial report.
- 27-1-3.5-9. Requirements for recognition as independent auditor — Limitations on individual rendering report — Limitations on auditor or preparer — Hear-

SECTION.

- ing to determine independence.
- 27-1-3.5-10. Consolidated or combined financial statements.
- 27-1-3.5-11. Notice of misstatements or failure to meet minimum capital and surplus requirements.
- 27-1-3.5-12. Report of deficiencies in internal control structure.
- 27-1-3.5-12.5. Letter for inclusion with annual report — Contents.
- 27-1-3.5-13. Retention and review of work papers and communications.
- 27-1-3.5-14. Exemption from compliance with chapter.
- 27-1-3.5-15. [Repealed.]
- 27-1-3.5-16. Penalty for failure to timely file.

SECTION.

27-1-3.5-17. Examinations under IC 27-1-3.1
not prohibited or restricted.

SECTION.

27-1-3.5-18. British or Canadian insurers —
Report and letter.

27-1-3.5-1. “Commissioner” defined. — As used in this chapter, “commissioner” refers to the insurance commissioner appointed under IC 27-1-1-2. [P.L.244-1989, § 2.]

27-1-3.5-2. “Domestic insurer” defined. — (a) As used in this chapter, “domestic insurer” means an insurer organized under the laws of Indiana.

(b) If a domestic insurer is a member of an “insurance holding company system” (as defined in IC 27-1-23-1), the term “domestic insurer” also includes:

- (1) Any person in immediate control of the domestic insurer; and
- (2) Any affiliate:
 - (A) In which the domestic insurer has invested; or
 - (B) That is indebted to the domestic insurer.

[P.L.244-1989, § 2.]

27-1-3.5-3. “Independent auditor” defined. — As used in this chapter, “independent auditor” means a certified public accountant or a certified public accounting firm that conducts an annual audit of a domestic insurer as required by this chapter. [P.L.244-1989, § 2.]

27-1-3.5-3.5. “Significant deficiency” defined. — As used in this chapter, “significant deficiency” means a reportable condition described in the Professional Standards of the American Institute of Certified Public Accounts. [P.L.251-1995, § 3.]

27-1-3.5-4. “Work papers” defined. — (a) As used in this chapter, “work papers” means the records kept by the independent auditor of the procedures followed, the tests performed, the information obtained, and the conclusions reached by the independent auditor’s audit of the financial statements of a domestic insurer.

(b) The term includes any audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries that:

- (1) Are prepared or obtained by the independent auditor in the course of any audit of the financial statements of a domestic insurer; and
- (2) Support the independent auditor’s opinion on the domestic insurer’s financial statements. [P.L.244-1989, § 2; P.L.251-1995, § 4.]

27-1-3.5-5. Applicability of chapter. — (a) Except as provided in subsections (b) and (c), this chapter applies to all domestic insurers.

(b) A domestic insurer that has:

- (1) Direct written premiums of less than one million dollars (\$1,000,000) in any calendar year; and

(2) Less than one thousand (1,000) policyholders or certificate holders of directly written policies nationwide at the end of a calendar year; is exempt from this chapter with respect to that year. However, the commissioner may require compliance with this chapter upon a finding that compliance with this chapter is necessary for the commissioner to carry out a statutory responsibility.

(c) A foreign or an alien insurer that files an audited financial report in another state or country pursuant to that state's or country's requirement for audited financial reports is exempt, with respect to the year of that audited financial report, from the requirement to file an audited financial report with the commissioner under this chapter, if:

(1) The commissioner has found the other state's or country's requirement for audited financial reports to be substantially similar to the requirements of this chapter;

(2) Copies of the audited financial report, the report on significant deficiencies in internal controls, and the accountant's letter of qualifications filed with the other state or country are filed with the commissioner in accordance with the filing dates set forth in sections 8, 12, and 12.5 [IC 27-1-3.5-8, IC 27-1-3.5-12, and IC 27-1-3.5-12.5] of this chapter; and

(3) A copy of a notification of an adverse financial condition report that is filed with the other state is filed with the commissioner within the time specified in section 11 [IC 27-1-3.5-11] of this chapter.

This subsection does not prevent the commissioner from ordering, conducting, or performing examinations of foreign or alien insurers under the rules, regulations, and practices of the department. [P.L.244-1989, § 2; P.L.251-1995, § 5.]

27-1-3.5-6. Time for filing report. — (a) A domestic insurer shall have an audit by an independent auditor every year and shall file an audited financial report with the commissioner every year before June 1 immediately following the December 31 that ends the year reported on in the financial report. The commissioner may require a domestic insurer to file an audited financial report earlier than June 1 if the commissioner gives the domestic insurer ninety (90) days advance notice of the earlier filing date.

(b) An extension of the June 1 filing date may be granted by the commissioner for thirty (30) days upon a showing by the insurer and its independent auditor of the reasons for requesting the extension and a determination by the commissioner that there is good cause for an extension. The request for an extension must be submitted in writing at least ten (10) days before the due date, and must include sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension. [P.L.244-1989, § 2; P.L.251-1995, § 6.]

Compiler's Notes. P.L.244-1989, § 5, effective July 1, 1989, provides: "Except as provided in IC 27-1-3.5, as added by this act, a domestic insurer shall file the annual au-

ditied financial reports required under IC 27-1-3.5, as added by this act, for the calendar year ending December 31, 1989, and for every calendar year after 1989."

27-1-3.5-7. Contents of report. — (a) The annual audited financial report filed by a domestic insurer under this chapter shall report:

- (1) The financial position of the domestic insurer as of the end of the most recently ended calendar year; and
- (2) The results of the domestic insurer's operations, cash flow, and changes in capital and surplus for that year;

in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance.

(b) The financial statements included in the annual audited financial report filed by a domestic insurer under this chapter shall be examined by an independent auditor. The independent auditor shall conduct its examination of the domestic insurer's financial statements in accordance with generally accepted auditing standards, and shall consider such other procedures illustrated in the Financial Condition Examiner's Handbook published by the National Association of Insurance Commissioners as the independent auditor considers necessary.

(c) An annual audited financial report filed by a domestic insurer under this chapter must include the following:

- (1) The report of the insurer's independent auditor.
- (2) A balance sheet reporting admitted assets, liabilities, capital, and surplus.
- (3) A statement of operations.
- (4) A statement of cash flow.
- (5) A statement of changes in capital and surplus.
- (6) Notes to financial statements. The notes must be those required by the National Association of Insurance Commissioners' annual statement instructions and any other notes required by statutory accounting practices, which must include the following:

(A) A reconciliation of differences, if any, between the financial statements included in the audited financial report and the annual statement filed by the insurer under IC 27-1-20-21, including a written description of the nature of these differences.

(B) A summary of the ownership and relationships of the domestic insurer and all affiliated companies.

(d) The financial statements included in a domestic insurer's audited financial report shall be prepared in the same form, and using language and groupings substantially the same, as the relevant sections of the annual statement of the insurer filed with the commissioner under IC 27-1-20-21.

(e) The financial statements included in a domestic insurer's audited financial report must be comparative, presenting the amounts as of December 31 of the year of the report and comparative amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report under this chapter, the comparative data may be omitted. [P.L.244-1989, § 2; P.L.251-1995, § 7.]

27-1-3.5-8. Registration of independent auditor — Requirements when auditor did not audit most recent financial report. — (a) A domestic insurer that is required by this chapter to file annual audited financial reports shall, not more than sixty (60) days after becoming subject to the requirement, register in writing with the commissioner the name and

address of the independent auditor retained by the insurer to conduct the annual audits required by this chapter. The domestic insurer shall continuously ensure that the information provided to the commissioner under this section is accurate, and shall inform the commissioner in writing of any change in the identity or address of its independent auditor.

(b) A domestic insurer shall obtain a letter from its independent auditor that:

(1) States that the independent auditor is aware of the provisions of IC 27 and the administrative rules of the department of insurance that relate to auditing, accounting, and financial matters; and

(2) Affirms that the independent auditor will express its opinion on the financial statements of the domestic insurer in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the department, specifying such exceptions as the independent auditor may believe appropriate.

The domestic insurer shall file a copy of this letter with the commissioner.

(c) If an independent auditor that audited the most recent financial report filed by the insurer with the commissioner under this chapter subsequently ceases to be the independent auditor for the insurer, the insurer shall:

(1) Not more than five (5) business days after the cessation of the independent auditor's services, notify the commissioner in writing of the identity and address of the new independent auditor;

(2) Not more than ten (10) business days after the notification given in subdivision (1), furnish the commissioner with a separate letter that states whether in the twenty-four (24) months preceding the engagement of the new independent auditor there were any disagreements between the insurer and its former independent auditor on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which, if not resolved to the satisfaction of the former independent auditor, would have caused the former independent auditor to make reference to the subject matter of the disagreement in the former independent auditor's statement of its opinion on the insurer's financial report, and, if there was such a disagreement, provides a description of the disagreement. Disagreements required to be reported under this subdivision include those at the decision making level that were resolved:

(A) To the former accountant's satisfaction; and

(B) Not to the former accountant's satisfaction; and

(3) Comply with subsection (d).

For the purposes of this subsection, "decision making level" refers to the personnel of the insurer who are responsible for the presentation of the insurer's financial statements and the personnel of the independent auditor who are responsible for rendering the opinion of the auditor on the insurer's financial report.

(d) A domestic insurer subject to the provisions of subsection (c) shall:

(1) Provide its former independent auditor with a copy of the letter furnished to the commissioner under subsection (c)(2); and

(2) Request in writing its former independent auditor to furnish a letter addressed to the insurer stating whether the former independent auditor agrees with the statements contained in the letter furnished to the commissioner under subsection (c)(2) and, if not, stating the reasons for the former independent auditor's disagreement.

The domestic insurer shall furnish the commissioner with a copy of any responsive letter it receives from its former independent auditor within five (5) business days after the insurer receives the letter. [P.L.244-1989, § 2; P.L.251-1995, § 8.]

27-1-3.5-9. Requirements for recognition as independent auditor — Limitations on individual rendering report — Limitations on auditor or preparer — Hearing to determine independence. —

(a) For the purposes of this chapter, the commissioner may not recognize as an independent auditor any individual or firm that is not:

- (1) A certified public accountant (if an individual) or made up of certified public accountants (if a firm); or
- (2) In good standing with:
 - (A) The American Institute of Certified Public Accountants; and
 - (B) All of the authorities that license certified public accountants and certified public accounting firms in the states in which the individual or firm is licensed to practice.

(b) A partner or other individual responsible for rendering a report may not act in that capacity for more than seven (7) consecutive years. An individual who has been responsible for rendering a report for seven (7) years is disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for two (2) years. A domestic insurer may apply to the commissioner and request to be exempted from the seven (7) year rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining if relief should be granted:

- (1) The number of partners, expertise of the partners, or number of insurance clients in the currently registered firm.
- (2) The premium volume of the domestic insurer.
- (3) The number of jurisdictions in which the domestic insurer transacts business.

(c) The commissioner may not recognize as an independent auditor or accept an annual audited financial report prepared in whole or part by a person who:

- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act under federal law (18 U.S.C. 1961 through 1968) or state law (IC 35-45-6) or any dishonest conduct or practices under federal or state law;
- (2) Has been found to have violated the insurance law of this state with respect to any previous reports submitted under this chapter; or
- (3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under this chapter.

(d) The commissioner may conduct a hearing under IC 4-21.5 to determine whether an independent auditor engaged by a domestic insurer is sufficiently independent of that domestic insurer to be capable of exercising independent judgment and expressing an objective opinion on the financial statements in the annual financial report filed by the insurer under this chapter. If the commissioner determines that the auditor is not sufficiently independent of the insurer, the commissioner shall require the insurer to replace the auditor with another that is sufficiently independent of the insurer. [P.L.244-1989, § 2; P.L.251-1995, § 9.]

27-1-3.5-10. Consolidated or combined financial statements. — A domestic insurer may apply in writing to the commissioner for approval to satisfy the requirements of this chapter by filing audited consolidated or combined financial statements instead of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of the insurer's direct and assumed business to the pool. If a domestic insurer whose application is approved elects to file a consolidated return, the insurer shall file, with its financial statements, a columnar consolidating or combining schedule, which must meet the following requirements:

- (1) Amounts shown on the consolidated or combined audited financial report shall be shown on the schedule.
- (2) Amounts for each insurer subject to this section shall be stated separately.
- (3) Noninsurance operations shall be shown on the schedule on an individual basis.
- (4) Explanations of consolidating and eliminating entries shall be included.
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the schedule and comparable amounts shown on the annual statements of the insurers. [P.L.244-1989, § 2; P.L.116-1994, § 17; P.L.130-1994, § 13.]

27-1-3.5-11. Notice of misstatements or failure to meet minimum capital and surplus requirements. — (a) A domestic insurer required to file annual audited financial reports under this chapter shall require its independent auditor to report in writing to the board of directors or the board of director's audit committee, not more than five (5) business days after making a determination, the independent auditor's determination that:

- (1) The domestic insurer has materially misstated to the commissioner the financial condition of the insurer as of the date of the balance sheet being examined by the independent auditor; or
- (2) The domestic insurer does not meet the minimum capital and surplus requirements of Indiana as of the date of the balance sheet being examined by the independent auditor.

The domestic insurer who has received a report under this section shall forward a copy of the report to the commissioner within five (5) business days after receipt of the report and shall provide the independent accountant making the report with evidence of the report being furnished to the commissioner. An independent auditor who does not receive the evidence that the report was filed with the commissioner within the required five (5) business days shall furnish the commissioner a copy of the report within the next five (5) business days. An independent auditor may not be liable to any person for a statement made in connection with this subsection, if the statement is made in good faith compliance with this subsection.

(b) If the independent auditor of a domestic insurer, after the filing of the insurer's audited financial report under this chapter, becomes aware of facts that, if the independent auditor had been aware of the facts when writing its report, might have affected the independent auditor's report that was included in the insurer's audited financial report, the independent auditor shall take such action as is prescribed in the Professional Standards of the American Institute of Certified Public Accountants. [P.L.244-1989, § 2; P.L.251-1995, § 10.]

27-1-3.5-12. Report of deficiencies in internal control structure. —

(a) A domestic insurer required by this chapter to file an audited financial report with the commissioner shall also furnish the commissioner with:

- (1) A written report (or a letter on reportable conditions) describing the significant deficiencies in the insurer's internal control structure, if internal control deficiencies were noted by the domestic insurer's independent auditor in connection with its audit; and
- (2) A written discussion of any remedial action taken or proposed in connection with the written report.

(b) The written report and written discussion required under subsection (a) must be filed not later than sixty (60) days after the filing of the annual audited financial statements. [P.L.244-1989, § 2; P.L.251-1995, § 11.]

27-1-3.5-12.5. Letter for inclusion with annual report — Contents.

— The independent auditor shall furnish the domestic insurer, in connection with and for inclusion in the filing of the annual audited financial report, a letter stating the following:

- (1) That the independent auditor is independent with respect to the insurer and conforms to the standards of the independent auditor's profession as contained in the Code of Professional Ethics and Pronouncements of the American Institute of Certified Public Accountants and the rules of Professional Conduct of the Indiana State Board of Accountancy.

(2) The:

- (A) General background and experience; and
- (B) Experience in audits of insurers;

of the staff assigned to the audit. The letter must also state whether each member of the staff is a certified public accountant. This subdivision does not prohibit the independent auditor from using the staff

considered appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards.

(3) That the independent auditor understands that the commissioner will be relying on the independent auditor's annual audited financial report and the independent auditor's opinion in the report for the monitoring and regulation of the financial positions of the insurers.

(4) That the independent auditor consents to the requirements of section 13 [IC 27-1-3.5-13] of this chapter and agrees to make available for review by the commissioner, the commissioner's designee, or the commissioner's appointed agent, any of the independent auditor's work papers and significant communications.

(5) That the independent auditor is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.

(6) That the independent auditor is in compliance with the requirements of section 9 [IC 27-1-3.5-9] of this chapter. [P.L.251-1995, § 12.]

27-1-3.5-13. Retention and review of work papers and communications. — (a) A domestic insurer required to file an audited financial report under this chapter shall require its independent auditor to make available for review by department examiners:

(1) All work papers prepared in the conduct of the independent auditor's examination; and

(2) Any record of significant communications related to the audit between the independent auditor and the insurer that took place at:

(A) The offices of the insurer;

(B) The department;

(C) The offices of the independent auditor; or

(D) Any other reasonable place designated by the commissioner.

The insurer shall require the independent auditor to retain the audit work papers and communications until the department has filed a report on the examination covering the period of the audit but not later than seven (7) years after the date of the audit report.

(b) Department examiners, in conducting a review of an independent auditor's work papers, may make and retain copies of the work papers and communications. A review of an independent auditor's work papers and communications shall be considered an investigation and all work papers and communications obtained or copied during the course of that investigation are confidential under IC 27-1-3.1-15. [P.L.244-1989, § 2; P.L.251-1995, § 13.]

27-1-3.5-14. Exemption from compliance with chapter. — (a) In response to a written application from a domestic insurer, the commissioner may grant an exemption from compliance with this chapter if the commissioner finds, upon review of the application, that compliance with this chapter would constitute a financial or an organizational hardship upon the domestic insurer. An exemption may be granted at any time for a specified period.

(b) Within ten (10) days after the denial of a domestic insurer’s written request for an exemption from this chapter, the insurer may, in writing, request a hearing on its application for an exemption. The hearing shall be held under IC 4-21.5. [P.L.244-1989, § 2; P.L.251-1995, § 14.]

27-1-3.5-15. [Repealed.]

Compiler’s Notes. This section, concerning the filing of reports prepared in accordance with generally accepted accounting

principles, was repealed by P.L.251-1995, § 22, effective July 1, 1995.

27-1-3.5-16. Penalty for failure to timely file. — A domestic insurer that fails to file an audited annual financial report before July 1 or any other deadline established by the commissioner for the insurer under this chapter without having obtained an extension is subject to a civil penalty of fifty dollars (\$50) per day until the report is received by the commissioner. [P.L.244-1989, § 2.]

27-1-3.5-17. Examinations under IC 27-1-3.1 not prohibited or restricted. — This chapter does not prohibit or in any way restrict the commissioner from ordering, conducting, or performing examinations of insurers under IC 27-1-3.1. [P.L.244-1989, § 2; P.L.26-1991, § 6.]

27-1-3.5-18. British or Canadian insurers — Report and letter. — (a) In the case of a British or Canadian insurer, the annual audited financial report refers to the annual statement of total business on the form filed by the company with its domiciliary supervision authority audited by an independent auditor.

(b) For a British or Canadian insurer, the letter required under section 8 [IC 27-1-3.5-8] of this chapter shall state that the accountant is aware of the requirement relating to the annual audited statement filed with the commissioner under section 6 [IC 27-1-3.5-6] of this chapter and shall affirm that the opinion expressed is in conformity with those requirements. [P.L.251-1995, § 15.]

CHAPTER 4

INSURANCE LAW — REHABILITATION, LIQUIDATION AND CONSERVATION

27-1-4-1 — 27-1-4-30. [Repealed.]

Compiler’s Notes. This chapter, concerning rehabilitation, liquidation and conservation, was repealed by Acts 1979, P.L. 255, § 3.

For present similar provisions, see IC 27-9-1-1 — IC 27-9-4-10.

CHAPTER 5

INSURANCE LAW — CLASSIFICATION OF INSURANCE

SECTION.	SECTION.
27-1-5-1. Classification authorized — Enumeration of classes.	27-1-5-2. Segregated investment account of assets — Management.

SECTION.

27-1-5-3. "Property" and "property interests" defined.

SECTION.

27-1-5-4. [Repealed.]

27-1-5-1. Classification authorized — Enumeration of classes. — A company, including a foreign or alien company authorized to transact business in Indiana, may make all or any one (1) or more of the kinds of insurance and reinsurance comprised in any one (1) of the following classes, subject to the provisions of IC 27-1. However, insurance on the assessment plan is limited to the making of insurance on the lives of persons and against disability from disease, bodily injury or death by accident.

CLASS 1. INSURANCE APPERTAINING TO PERSONS ONLY:

(a) To insure the lives of persons, including insurance against permanent mental or physical disability resulting from accident or disease, or against accidental death combined with a policy for life insurance, and to grant, purchase or dispose of annuities;

(b) To insure against bodily injury or death by accident and against disablement resulting from sickness and every insurance appertaining thereto, including contracts between an insurer and policyholder providing for the indemnification of the policyholder (or the other party) obligated to pay benefits resulting from bodily injury, death by accident, or disablement from sickness in accordance with the provisions of a benefit plan; however, for purposes of Class 2(1) of this section, this provision does not apply;

(c) Within the meaning of "Insurance Appertaining to Persons Only," generally described in Class 1 of this section, are to be included, among other things:

(1) Contracts providing for immediate or future life insurance and/or annuity benefits, fundable and/or computable as to cost or payment or both; and

(2) Contracts providing for insurance against bodily injury or sickness, a portion of which may be funded;

out of or on the basis of assets in a segregated investment account; the assets being those received by the company from or in relation to contributions, premiums or considerations received by it under such contracts. The establishment of such account shall in no way affect the company's absolute ownership of the investment items to which the account from time to time pertains. A company issuing contracts of the nature described may as to them establish one or more segregated accounts, dependent upon the company's plan of operation.

A segregated investment account established as contemplated in this paragraph (c) shall not be chargeable with liabilities arising out of any other business the company may conduct and which has no specific relation to or dependence upon such account. Any surplus or deficit which may arise in any such segregated investment account by virtue of any guarantee by the company of the value of the assets allocated to the account, their investment or income, or mortality experience shall be adjusted by withdrawals from or additions to such account so that the assets of such account shall always equal the assets required to satisfy all liabilities arising under contracts fundable by such account.

CLASS 2.

- (a) To insure any persons against bodily injury, disablement or death resulting from accident and against disablement resulting from disease and every insurance appertaining thereto;
- (b) To insure against loss or damage resulting from accident to, or injury sustained by, an employee or other person for which accident or injury the insured is liable;
- (c) To insure against loss or damage by burglary, theft or housebreaking;
- (d) To insure glass, its fittings or lettering thereon, against breakage or damage;
- (e) To insure against loss from injury to persons or property which results accidentally from steam-boilers, elevators, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby; and to make inspection of and issue certificates of inspection upon such boilers, elevators, electrical devices, engines, machinery and appliances;
- (f) To insure against any loss, expense and/or liability resulting from the ownership, maintenance, use and/or operation of any automobile or other motor vehicle, including complete line coverage on automobiles or other motor vehicles;
- (g) To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and/or water-pipes;
- (h) To insure against any loss or damage resulting from accident to or injury suffered by any person, for which loss or damage the insured is liable; excepting employer's liability insurance as authorized under subsection (b) of Class 2 of this section;
- (i) To insure persons, associations or corporations against loss or damage by reason of the giving or extending of credit;
- (j) To insure against loss or damage on account of encumbrances upon or defects in the title to real estate and against loss by reason of the nonpayment of the principal or interest of bonds, mortgages or other evidences of indebtedness;
- (k) To become surety or guarantor for any person, partnership or corporation in any position or place of trust or as custodian of money or property, public or private; to become a surety or guarantor for the performances by any person, copartnership or corporation of any lawful obligation, undertaking, agreement or contract of any kind, except contracts or policies of insurance, to become surety or guarantor for the performance of insurance contracts where surety bonds are required by states or municipalities. The business covered by this subsection (k) shall be considered as fidelity and surety obligations and construed as such regardless of any other classification contained in this chapter to the contrary;
- (l) To insure against any other casualty or insurance risk specified in the articles of incorporation which lawfully may be made the subject of insurance and for which specific provision is not made in this chapter.
- (m) To insure against legal expenses, such as attorneys fees, court costs, witness fees and incidental expenses incurred in connection with

the use of the professional services of attorneys at law, in consideration of a specified payment for an interval of time, regardless of whether payment is made by the beneficiaries individually or by a third person for them, so that the total cost incurred by assuming the obligation is spread directly or indirectly among the group, except those expenses resulting from the following:

- (1) Retainer contracts made with a single client with the fee based on an estimate of the nature and the amount of services that will be provided to that client, and similar contracts made with a group of clients involved in the same or closely related legal matters (such as class actions).
- (2) Plans providing no benefits other than a limited amount of consultation and advice on simple matters either alone or in combination with referral services or the promise of fee discounts for other matters.
- (3) Plans providing limited benefits on simple legal matters on a voluntary and informal basis, not involving a legally binding promise, in the context of an employment or educational or similar relationship.
- (4) Legal services provided by unions or employee associations to its members in matters solely relating to employment or occupation, and provided, further, that nothing in this chapter shall prohibit group legal services of any other kind.
- (5) Payment of fines, penalties, judgments or assessments.

CLASS 3.

- (a) To make insurance on buildings and personal property of every description against loss or damage, including loss of use or occupancy, caused by fire, smoke or smudge, lightning or other electrical disturbance, earthquake, windstorm, cyclone, tornado, tempest, hail, frost or snow, ice, sleet, weather or climatic conditions, including excess or deficiency of moisture, flood, rain or drought, rising of the waters of the ocean, or its tributaries, bombardment, invasion, insurrection, riot, civil war or commotion, military or usurped power, and by explosion, whether fire ensues or not, except explosion of steam-boilers;
- (b) To insure against loss or damage from any cause, to crops or farm products and loss of rental value of land used in producing such crops or products;
- (c) To insure against loss or damage by water or other fluid to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires or of other conduits or containers or by water entering through leaks or openings in buildings and/or water-pipes, and against accidental injury to such sprinklers, pumps, or other apparatus, conduits, containers or water-pipes;
- (d) To insure vessels, boats, cargoes, goods, merchandise, freight, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, other evidences of debt, bottomry and respondentia interests, and other property against loss or damage by any or all of the risks of lake, river, canal and inland navigation and transportation, and other

insurances appertaining to or connected with marine risks, including complete line coverage automobile insurance, and also insurance on any other property or risk, or the use thereof, by reason of any contingency unless the granting of such insurance is contrary to public policy. However, such companies may not grant or make insurance against:

- (1) Losses arising from explosion of steam boilers;
- (2) Losses arising from breakage of plate or other glass, except when caused by fire, wind, or hail storm, and except when the loss occurs to glass which is a part of any dwelling house;
- (3) Risks of the classes commonly known as fidelity insurance and surety bonds;
- (4) Risks of the classes commonly known as burglary or theft insurance, except as above specifically permitted, and except for the risks to any dwelling house; and
- (5) The risk of legal liability by reason of bodily injury to the person except as such liability may result from the ownership, maintenance, use or operation of an automobile. [Acts 1935, ch. 162, § 59, p. 588; 1957, ch. 265, § 1; 1959, ch. 87, § 1; 1961, ch. 138, § 2; 1978, P.L. 129, § 1; 1982, P.L. 160, § 1; P.L.260-1983, § 5.]

Cross References. Group legal service plans, Rule A.D. 26.

Legal insurance, IC 27-7-8.

Medical Malpractice Act, IC 27-12.

Mine subsidence insurance, IC 27-7-9-8.

Variable life insurance policies, IC 27-1-5-1.

Indiana Law Journal. Procedural Safeguards in Administrative Rule Making in Indiana, 37 Ind. L. J. 423.

Opinions of Attorney General. The department of insurance may not issue a certificate of authority to any insurer to simultaneously write Class 1 (life and health), Class 2 (accident, burglary, theft, glass, automobile, water, credit, title, surety and legal), and Class 3 (building, personal property, crop, water, marine and automobile) insurance as defined in this section. 1980, No. 80-22, p. 65.

Absent any further specific statutory authority providing an exemption to the restriction imposed by this section, insurance companies permitted to make any of the kinds of insurance and reinsurance comprised in Class 2 or 3 cannot make any of the kinds of insurance and reinsurance comprised in Class 1. 1980, No. 80-22, p. 65.

Any insurer authorized to market one or more kinds of insurance or reinsurance under Class 2 or Class 3 may be authorized to make the kinds of insurance and reinsurance specified in both Class 2 and Class 3. An insurance company authorized to write the kinds of insurance enumerated in Class 1 may establish or acquire a subsidiary company which may be authorized to make any one or more of the above classes of insurance. 1980, No. 80-22, p. 65.

Group insurance policies and certificates of insurance may be issued only where the Insurance Code specifically authorizes the issuance of group coverage. 1984, No. 84-3, p. 77.

The only group casualty and liability insurance authorized by the Indiana General Assembly to be written by a Class 2 and/or Class 3 insurer as set forth in this section is that authorized by this section for two or more qualified public transportation agencies only for insuring their public transportation functions. 1984, No. 84-3, p. 77.

A Class 2 and/or Class 3 insurer may also issue group accident and sickness insurance under Class 2(a) and group legal insurance under Class 2(m), but whether they may issue group credit insurance needs legislative clarification. 1984, No. 84-3, p. 77.

Collateral References. 43 Am. Jur. 2d Insurance § 726.

Aircraft insurance: risks and losses covered. 48 A.L.R.3d 1120.

Business interruption insurance. 37 A.L.R.5th 41.

Causes of loss under windstorm insurance coverage. 93 A.L.R.2d 145.

Collision automobile property insurance as covering collision with bodies of water. 34 A.L.R.3d 992.

Construction and application of provision in liability policy limiting the amount of insurer's liability to one person. 13 A.L.R.3d 1228.

Construction of clause excluding injury or damage caused by race, speed test, or the like. 23 A.L.R.3d 1444.

Construction of terms "in transit," "transportation," and the like, within coverage or

exclusion clause of insurance policy. 80 A.L.R.2d 445.

Coverage of injury sustained on or in connection with sidewalks or ways adjacent to certain named property. 23 A.L.R.3d 1230.

Coverage of insurance policy against theft of property from motor vehicle. 2 A.L.R.3d 809.

Coverage of policy insuring against liability under dramshop acts. 14 A.L.R.3d 858.

Coverage under all-risk insurance. 30 A.L.R.5th 170.

Damage from sonic boom as within property insurance policy. 74 A.L.R.2d 754.

Determination of amount payable on loss to growing crop under policy insuring against loss or injury. 20 A.L.R.3d 924.

Fire insurance: insurable interest of one expecting to inherit property or take by will. 52 A.L.R.4th 1273.

Group insurance policy for benefit of union members. 17 A.L.R.2d 927.

Liability insurance of garages, motor vehicle repair shops and sales agencies, and the like. 93 A.L.R.2d 1047.

Liability insurance policy as covering insured's obligation to indemnify, or make contributions to, cotortfeasor. 4 A.L.R.3d 620.

Loss by heat, smoke or soot without external ignition as within standard fire insurance policy. 17 A.L.R.3d 1155.

Motor scooter as within policy provisions relating to automobiles or motorcycles. 43 A.L.R.3d 1400.

Partnership or joint venture exclusion in contractor's or other similar comprehensive general liability insurance policy. 57 A.L.R.4th 1155.

Products liability insurance. 45 A.L.R.2d 937.

Provisions of burglary or theft policy as to effect of disappearance of property. 12 A.L.R.3d 865.

Provisions of burglary or theft policy requiring losses evidenced by "physical damage to premises." 22 A.L.R.3d 1305.

Rent loss insurance. 17 A.L.R.2d 1226.

Risks covered by marine insurance policy against theft. 19 A.L.R.3d 1150.

Temporary automobile insurance pending issuance of policy. 12 A.L.R.3d 1304.

Theft and vandalism insurance: Coinsured's misconduct as barring innocent coinsured's right to recover on policy. 64 A.L.R.4th 714.

Validity and construction of "no fault" automobile insurance plans. 42 A.L.R.3d 229.

Validity, construction, and effect of insurance policy provision requiring insured to maintain coverage to specified value of property (coinsurance clause). 43 A.L.R.3d 566.

Validity, construction and effect of provision in shipping contract or bill of lading that carrier shall have benefit of shipper's insurance against loss of or damage to shipment. 27 A.L.R.3d 984.

Water damage insurance, damage within coverage of. 4 A.L.R.2d 532.

What are "appurtenant" private structures within provision of property insurance policy expressly extending coverage to such structures. 43 A.L.R.3d 1351.

Liability insurer's postloss conduct as waiver of, or estoppel to assert, "no-action" clause. 68 A.L.R.4th 389.

Construction and effect of "rain insurance" policies insuring against rainfall on the date of concert, exhibition, game, or the like. 70 A.L.R.4th 1010.

Property damage insurance: what constitutes "contamination" within policy clause excluding coverage. 72 A.L.R.4th 633.

Insurable interest in property of lessee with option to purchase property. 74 A.L.R.4th 883.

What is "flood" within exclusionary clause of property damage policy. 78 A.L.R.4th 817.

Construction and effect of provisional or monthly reporting inventory insurance. 81 A.L.R.4th 9.

Arbitration of medical malpractice claims. 24 A.L.R.5th 1.

What constitutes "vandalism" or "malicious mischief" within meaning of insurance policy specifically extending coverage to losses from such causes. 56 A.L.R.5th 407.

What constitutes use of automobile "to carry persons or property for fee" within exclusion of automobile insurance policy. 57 A.L.R.5th 591.

27-1-5-2. Segregated investment account of assets — Management. — Notwithstanding any other provisions of this article, any company which has established or establishes on or after March 8, 1935, a segregated investment account of assets as authorized in Class 1(c) of section 1 [IC 27-1-5-1] of this chapter may provide that such segregated investment account of assets shall be managed by a committee, board, or similarly designated body, the members of which need not be otherwise affiliated with such company or its board of directors and the members of which may be elected solely by the owners of the contracts issued and outstanding under such account, and may further provide that each contract owner under such

account shall have the right, with respect to the election of members of such committee, board, or body and with respect to other matters pertaining only to such account, to vote a number of votes proportionate to the value of the contract owner’s interest in the account in the manner provided by such rules as may be adopted by such committee, board, or body. [Acts 1935, ch. 162, § 59a, as added by Acts 1967, ch. 127, § 6; P.L.252-1985, § 13.]

27-1-5-3. “Property” and “property interests” defined. — “Property” and “property interests,” as used in section 1 [IC 27-1-5-1] of this chapter, shall include real and personal property, chattels real, currency, coin, bank notes, bullion, postage or revenue stamps, express, postal, pension or bank money orders, bonds, debentures, checks, coupons, demand or time drafts, bills of exchange, acceptances, promissory notes, certificates of deposit, certificates of stock, warehouse receipts, bills of lading, and all other choses in action. [Acts 1935, ch. 162, § 60, p. 588; P.L.252-1985, § 14.]

Collateral References. What constitutes a “private” structure or a private structure not used for mercantile purposes within the meaning of property insurance policies. 19 A.L.R.3d 902.

Reformation of property insurance policy to

correctly identify property insured. 25 A.L.R.3d 1232.

What constitutes “vacant land” within meaning of liability or property insurance policy provisions. 47 A.L.R.5th 535.

27-1-5-4. [Repealed.]

Compiler’s Notes. This section, concerning companies authorized to participate in prepaid health care delivery plans, was re-

pealed by P.L.255-1995, § 15, effective July 1, 1995.

CHAPTER 6

INSURANCE LAW — FORMATION OF DOMESTIC COMPANIES

SECTION.	SECTION.
27-1-6-1. Incorporators.	27-1-6-12. Effect of permit.
27-1-6-2. Rights and powers.	27-1-6-13. Requirements before beginning business.
27-1-6-3. Corporate name.	27-1-6-14. Requirements for stock companies.
27-1-6-4. Articles of incorporation.	27-1-6-15. Requirements for mutual companies.
27-1-6-5. Notice of intention — Publication.	27-1-6-16. Companies writing multiple lines of insurance.
27-1-6-6. Preparation of articles of incorporation.	27-1-6-17. Examination and investigation.
27-1-6-7. Filing proof of publication.	27-1-6-18. Issuance of certificate of authority.
27-1-6-8. Approval of articles by department.	27-1-6-19. Organization meetings.
27-1-6-9. Examination of articles by attorney general.	27-1-6-20. [Repealed.]
27-1-6-10. Approval by secretary of state.	
27-1-6-11. Issuance of permit to complete organization.	

27-1-6-1. Incorporators. — Any number of natural persons, not less than seven (7), all of whom are eighteen (18) years of age or older, at least a majority of whom are residents of the state of Indiana and citizens of the United States, may form a corporation under the provisions of this chapter for the purpose of making any kind or kinds of insurance described in any one class set out in IC 27-1-5-1, other than reciprocal, farm mutual,

fraternal, and assessment insurance, by complying with the provisions of this chapter. [Acts 1935, ch. 162, § 61, p. 588; 1973, P.L. 270, § 1; P.L.252-1985, § 15.]

Cross References. Domestic company defined, IC 27-1-2-3.

Farmers' mutual companies for fire, lighting, windstorm, and hail insurance, IC 27-5-1, IC 27-5-10-1.

Fraternal beneficiary associations or societies, IC 27-11-1 — IC 27-11-8.

Group life insurance, employees, IC 27-1-12.

Livestock insurance, IC 27-5-9.

Membership in life and health insurance guaranty association required, IC 27-8-8.

Mutual life and accident companies on assessment plan, IC 27-8-1-1 — IC 27-8-3-27.

Reciprocal or interinsurance contracts, IC 27-6-6, IC 27-1-20-25.

Worker's compensation insurance, employer's mutuals or reciprocals, IC 22-3-6-2.

27-1-6-2. Rights and powers. — Any insurance company incorporated as such under this chapter, and its successors shall have the rights and powers, shall be entitled to the privileges, and shall be subject to the duties, obligations, and liabilities as prescribed in this article. [Acts 1935, ch. 162, § 62, p. 588; P.L.252-1985, § 16.]

27-1-6-3. Corporate name. — The name of any company organized under this article shall contain the word "insurance" and the word "company," "corporation" or "incorporated," or shall end with an abbreviation of one of these words, except that the word "company" or the abbreviation "Co." may be used only if that word or abbreviation is not immediately preceded by the word "and," or any substitute therefor.

No company organized under this article shall:

(a) Use as a part of its corporate name the words "United States," "Federal," "government," "official," or any word that would imply that the company was an administrative agency of the state of Indiana or of the United States, or is subject to supervision of any department other than the department of insurance of the state of Indiana.

(b) Take or assume a corporate name the same as, or confusingly similar to, the name of any other insurance company then existing under the laws of this state or authorized to transact business in this state, unless at the same time (1) such other company shall change its corporate name or withdraw from transacting business in this state, and (2) the written consent of such company, signed and verified under oath by its secretary, shall be filed with the department.

Any company organized under this article may change its corporate name at any time by amending its articles of incorporation in the manner hereinafter provided. The provisions of this section shall not affect the right of any insurance company which is existing under the laws of this state at the time this article takes effect or of any such company which thereafter reorganizes or reincorporates under this article or of any company authorized to transact business in this state at the time this article takes effect to continue the use of its corporate name. [Acts 1935, ch. 162, § 63, p. 588; 1977, P.L. 281, § 3.]

Opinions of Attorney General. A corporation applying for admission to do business

in Indiana is not debarred because of its use of the name "Mutual Trust Life Insurance Com-

pany." Reading IC 27-1-6-3 and IC 28-1-20-4 together, such title cannot be considered misleading. 1941, p. 34.

Any foreign insurance company now attempting to be admitted to do business in this state must meet the requirements of this

section regardless of the date the company was organized. 1963, No. 41, p. 225.

An insurance company using the word "assurance" in its name would substantially comply with the intent of the legislature. 1963, No. 41, p. 225.

27-1-6-4. Articles of incorporation. — The incorporators shall execute articles of incorporation, not inconsistent with the provisions of this article, setting forth the following:

- (a) The name of the proposed corporation.
- (b) The post office address of its principal office.
- (c) A precise and accurate statement of the purpose or purposes for which the company is organized, which shall be restricted to the kind or kinds of insurance comprised within one (1) of the classes of insurance specified in IC 27-1-5-1, and that it is organized under this article.
- (d) The term for which it is to continue as a corporation, which may be perpetual.
- (e) In the case of a stock company, the amount of its capital and the aggregate number of shares which the company shall have authority to issue and the par value thereof.
- (f) The amount of paid-in capital with which the company will begin business.
- (g) The plan or principle upon which the business is to be transacted.
- (h) The name, occupation, and post office address of each of the incorporators.
- (i) The names of the first officers and directors, their post office addresses, and their terms of office.
- (j) Any other provisions, consistent with the laws of this state, for the regulation of the business and conduct of the affairs of the company and creating, defining, limiting, or regulating the powers of the company, of the directors, or of the shareholders or any class or classes of shareholders. [Acts 1935, ch. 162, § 64, p. 588; P.L.252-1985, § 17.]

Cross References. Preparation of articles of incorporation, IC 27-1-6-6.

27-1-6-5. Notice of intention — Publication. — At least ten (10) and not more than twenty (20) days prior to the presentation of the articles of incorporation to the department as provided in section 6 [IC 27-1-6-6] of this chapter, the incorporators shall publish at least once in a newspaper of general circulation, printed and published in the English language, in the county in which the principal office of the proposed company is to be located, and at least once in a newspaper of general circulation, printed and published in the English language, in the city of Indianapolis, Marion County, Indiana, a notice of intention to organize such a corporation, which publication shall contain the following:

- (a) The name of the proposed company.
- (b) A statement that the proposed company is to be organized under the provisions of this article.

(c) The general character and class or classes of insurance to be transacted by the proposed company.

(d) The time when the articles of incorporation will be presented to the department.

(e) The names, occupations, and addresses of the incorporators.

[Acts 1935, ch. 162, § 65, p. 588; P.L.252-1985, § 18.]

27-1-6-6. Preparation of articles of incorporation. — The form of the articles of incorporation shall be prescribed and furnished by the department. The articles of incorporation shall be:

(1) Prepared and signed in triplicate originals by all of the incorporators, or, in the case of a redomestication under IC 27-1-6.5, by the corporate officers if the original incorporators are no longer available;

(2) Acknowledged by at least three (3) of the incorporators or corporate officers before a notary public; and

(3) Presented in triplicate originals to the department at the office of the department. [Acts 1935, ch. 162, § 66, p. 588; P.L.116-1994, § 18.]

Cross References. Contents of articles of incorporation, IC 27-1-6-4.

27-1-6-7. Filing proof of publication. — At the time of presenting the articles of incorporation for approval, the incorporators shall file with the department the proof of publication required by section 5 [IC 27-1-6-5] of this chapter. The department shall determine whether the proof of publication conforms with the provisions of section 5 of this chapter and is hereby authorized to approve or disapprove the same. If the department shall disapprove the proof of publication, it shall endorse its disapproval thereon and return the proof of publication and the articles of incorporation to the incorporators. If the department approves the proof of publication, it shall then consider the articles of incorporation. [Acts 1935, ch. 162, § 67, p. 588; P.L.252-1985, § 19.]

27-1-6-8. Approval of articles by department. — The department is hereby authorized, in its discretion, to approve or disapprove the articles of incorporation of the proposed company. If the department shall approve the articles of incorporation of the proposed company, it shall write or stamp, in an appropriate place on each of said triplicate copies of such articles of incorporation, the words "Approved by the department of insurance of the state of Indiana"; and the date of such approval, beneath which shall appear the impression of the seal of the department and the signature of the commissioner. [Acts 1935, ch. 162, § 68, p. 588.]

27-1-6-9. Examination of articles by attorney general. — In the event the department approves the articles of incorporation of the proposed company, it shall then submit the proposed articles of incorporation to the attorney general for the state of Indiana, who shall examine said articles. If the attorney general finds that the articles of incorporation conform to the provisions of this article and are not inconsistent with the constitution of

this state, and of the United States, he shall so certify and shall thereupon return the articles of incorporation to the department with his approval endorsed thereon. [Acts 1935, ch. 162, § 69, p. 588; P.L.252-1985, § 20.]

27-1-6-10. Approval by secretary of state. — When the articles of incorporation have been approved by the attorney general and returned to the department, then the department shall present the same to the secretary of state for the state of Indiana. If the secretary of state finds that the articles of incorporation conform to law, he shall indorse his approval upon each of the triplicate copies of the articles, and when all fees have been paid as required by law, he shall file one (1) copy in his office and return the other two (2) copies to the incorporators or their representatives. [Acts 1935, ch. 162, § 70, p. 588.]

Cross References. Fees and charges payable to the insurance department, IC 27-1-3-15.

Fees payable by all domestic corporations to the secretary of state, IC 23-1-18-3.

Fees payable to secretary of state by insurance companies organized or reorganized under the laws of this state, IC 27-1-20-13.

27-1-6-11. Issuance of permit to complete organization. — (a) When the articles of incorporation are returned to the incorporators or their representatives bearing the endorsement of the approval of the secretary of state, as provided in section 10 [IC 27-1-6-10] of this chapter, the incorporators or their representatives shall obtain a certified copy of the articles of incorporation from the secretary of state and file such certified copy with the department.

(b) The incorporators shall also file with the department a surety bond payable to the state of Indiana in the sum of ten thousand dollars (\$10,000), with surety to be approved by the commissioner or collateral in the sum of ten thousand dollars (\$10,000), as approved by the commissioner, and conditioned upon the faithful accounting to the department on completion of organization and receipt of its certificate of authority from the department, or to its shareholders, members, applicants for policies and creditors, or the trustee, receiver, or assignee of the proposed company duly appointed in any proceedings in any court of competent jurisdiction in the state in accordance with their respective rights in case the organization of the proposed company should not be completed and a certificate of authority should not be procured from the department.

(c) Whenever the incorporators have filed their certified copy of the articles of incorporation and bond as provided in this section, then the department may issue a permit for completion of organization. The company shall have authority under such permit to solicit subscriptions and payments for capital stock, if a stock company, and applications and advance premiums for insurance, if a mutual company, and to exercise such powers, subject to the limitations in this article prescribed, as may be necessary and proper in completing its organization and qualifying itself for a certificate of authority from the department to make the kind or kinds of insurance proposed in its articles of incorporation, Provided That such company shall not issue policies or enter into contracts of insurance until it shall have

received the certificate of the department authorizing it so to do. [Acts 1935, ch. 162, § 71, p. 588; P.L.252-1985, § 21.]

Opinions of Attorney General. The responsibility for passing upon the soundness of the plan from a security standpoint is vested in the securities commission, which has the affirmative duty to protect the public insofar as this phase of the matter is concerned. 1941, p. 144.

The general assembly has not expressly vested in the insurance commissioner the discretion to deny the permit for the completion of the organization on the ground that

the financial condition of the proposed organization has been impaired by excessive advances to salesmen or in any other manner. 1941, p. 144.

A person who purchased stock in the proposed insurance company prior to the date of the issuance of the permit to complete organization would have all of the remedies that would inure to any stockholder, and, in addition, would be in a position to take advantage of the provisions of IC 27-1-6-13. 1941, p. 144.

27-1-6-12. Effect of permit. — Upon the issuance of the permit for completion of organization by the department, the corporate existence shall begin, and thereupon such incorporators and their associates shall become a body corporate with power to sue and be sued, contract and be contracted with, adopt a seal, and do such other acts, subject to the provisions and to the restrictions of this article, as shall be needful to accomplish the purpose of completing its organization, Provided, That such company shall not issue policies or enter into contracts of insurance until it shall have received the certificate of the department authorizing it so to do. [Acts 1935, ch. 162, § 72, p. 588; P.L.252-1985, § 22.]

27-1-6-13. Requirements before beginning business. — Any company organized under this article shall not transact any business or incur any indebtedness until:

(a) One (1) of the triplicate copies of the articles of incorporation, bearing the approval of the department and the attorney general and the endorsement of the approval of the secretary of state, as provided in section 10 [IC 27-1-6-10] of this chapter has been filed for record with the county recorder of the county in which the principal office is located; and

(b) A certified copy of the permit for completion of organization, issued pursuant to section 11 [IC 27-1-6-11] of this chapter, shall be filed for record with the county recorder of the county in which the principal office is located, which certified copy shall be evidence only that the company has been authorized to proceed in the completion of its organization.

If a company transacts any business or incurs any indebtedness in violation of this section, the officers who participated therein and the directors, except those who dissented therefrom and caused their dissent to be filed at the time in the principal office of the company or who, being absent, filed their dissent upon learning of the action, shall be severally liable for the debts or liabilities of the company so incurred or arising therefrom. [Acts 1935, ch. 162, § 73, p. 588; P.L.252-1985, § 23.]

Cross References. Certificate of authority prerequisite to transacting business, IC 27-1-3-20.

Membership in life and health insurance guaranty association required, IC 27-8-8.

27-1-6-14. Requirements for stock companies. — (a) A domestic capital stock company that organized before March 7, 1967, must maintain a paid-in capital stock of not less than:

- (1) Two hundred thousand dollars (\$200,000), if it markets one or more kinds of insurance under Class I;
- (2) Two hundred thousand dollars (\$200,000), if it markets one (1) kind of insurance under Class II, other than Class II(k) insurance;
- (3) Three hundred thousand dollars (\$300,000), if it markets two (2) kinds of insurance under Class II, other than Class II(k) insurance;
- (4) Four hundred thousand dollars (\$400,000), if it markets three (3) or more kinds of insurance under Class II, other than Class II(k) insurance;
- (5) Four hundred thousand dollars (\$400,000), if it markets one or more kinds of insurance under Class III;
- (6) Seven hundred fifty thousand dollars (\$750,000), if it markets one or more kinds of insurance under both Class II and Class III; or
- (7) Seven hundred fifty thousand dollars (\$750,000), if it markets one or more kinds of insurance under Class II, including Class II(k) insurance.

(b) A domestic capital stock company that organized after March 6, 1967, and before July 1, 1977, must maintain a paid-in capital stock of not less than:

- (1) Four hundred thousand dollars (\$400,000), if it markets one or more kinds of insurance under Class I;
- (2) Four hundred thousand dollars (\$400,000), if it markets one or more kinds of insurance under Class II, other than Class II(k) insurance;
- (3) Four hundred thousand dollars (\$400,000), if it markets one or more kinds of insurance under Class III;
- (4) Seven hundred fifty thousand dollars (\$750,000), if it markets one or more kinds of insurance under both Class II and Class III; or
- (5) Seven hundred fifty thousand dollars (\$750,000), if it markets one or more kinds of insurance under Class II, including Class II(k) insurance.

(c) A domestic capital stock company that organized after June 30, 1977, must maintain a paid-in capital stock of not less than one million dollars (\$1,000,000).

(d) A domestic capital stock company must deposit with the department the following percentage of its paid-in capital stock requirement under this section in cash or in obligations of the United States:

- (1) Twenty-five percent (25%), if it organized before July 1, 1977.
- (2) Ten percent (10%), if it organized after June 30, 1977.

(e) A domestic capital stock company must maintain a surplus of not less than two hundred fifty thousand dollars (\$250,000). However, when it organizes, it must have a surplus of not less than one million dollars (\$1,000,000).

(f) If the commissioner determines that the continued operation of a domestic capital stock company may be hazardous to the policyholders or the general public, the commissioner may, upon the commissioner's deter-

mination, issue an order requiring the insurer to increase the insurer's capital and surplus based on the type, volume, and nature of the business transacted. [Acts 1935, ch. 162, § 74, p. 588; 1955, ch. 316, § 1; 1959, ch. 13, § 1; 1967, ch. 127, § 2; 1977, P.L. 282, § 1; 1980, P.L. 169, § 1; P.L. 116-1994, § 19; P.L. 130-1994, § 14.]

Opinions of Attorney General. Under Acts 1929, ch. 165, an insurance company could not put up as a deposit a deed to its real estate. 1937, p. 549.

The surplus of a qualifying life insurance company need not be paid in in money but may consist of securities acceptable to the department. 1939, p. 14.

The requirements of this section are not complied with by the realization of the prescribed amount by the sale of stock at a premium, but the entire amount of stock, appraised at par, must be subscribed and paid for in order to meet the requirements of the Code. 1941, p. 252.

A domestic capital stock company incorporated November, 1952, authorized to make insurance described in IC 27-1-5-1, class I(a)

and (b), had to maintain a surplus of at least \$50,000 since it was required to have that much surplus before it could be issued a certificate of authority. 1964, No. 23, p. 109.

The amendments of 1955 and 1959 to this act (IC 27-1-2-1 — IC 27-1-20-32) were prospective and not retrospective. 1964, No. 23, p. 109.

The Indiana general assembly has provided that any domestic insurance company that received a permit to complete organization before July 1, 1977, would be exempt from the new requirements of this section as enacted by Acts 1977, Public Law 282, until January 1, 1981, and the paid-in capital requirements set forth in this section prior to the 1977 amendment would apply. 1979, No. 79-17, p. 47.

27-1-6-15. Requirements for mutual companies. — (a) Except as provided in subsection (b) a domestic mutual company that organized before July 1, 1977, must maintain a surplus of not less than two hundred fifty thousand dollars (\$250,000). This subsection does not apply to a company that is organized under IC 27-5.

(b) A domestic mutual company that organized before July 1, 1977, must maintain a surplus of not less than:

(1) Seven hundred fifty thousand dollars (\$750,000), if it markets one or more kinds of insurance under both Class II and Class III, other than Class II(k) insurance;

(2) One million dollars (\$1,000,000), if it markets one or more kinds of insurance under Class II, including Class II(k) insurance; or

(3) One million dollars (\$1,000,000), if it markets one or more kinds of insurance under both Class II and Class III, including Class II(k) insurance.

(c) A domestic mutual company that organized after June 30, 1977, must maintain a surplus of not less than one million two hundred fifty thousand dollars (\$1,250,000). However, when it organizes, it must:

(1) Have a surplus of not less than two million dollars (\$2,000,000);

(2) For the one (1) or more kinds of insurance under Class I that it intends to market, have received applications for insurance from not less than four hundred (400) persons, each application for an amount not less than one thousand dollars (\$1,000), and have received the first year's premium due on a policy to be issued on each such application; and

(3) For the one (1) or more kinds of insurance under Class II or Class III that it intends to market, have received applications for insurance covering not less than eight hundred (800) separate risks in not less

than forty (40) policies to be issued to not less than forty (40) members, and have received premiums amounting to not less than one hundred thousand dollars (\$100,000) for those policies.

(d) A domestic mutual company must deposit with the department in cash or in obligations of the United States:

- (1) Twenty-five thousand dollars (\$25,000), if it organized before June 30, 1955;
- (2) Fifty thousand dollars (\$50,000), if it organized after June 29, 1955, and before March 7, 1967; or
- (3) One hundred thousand dollars (\$100,000), if it organized after March 6, 1967.

This subsection does not apply to a company that is organized under IC 27-5.

(e) If the commissioner determines that the continued operation of a domestic mutual company may be hazardous to the policyholders or the general public, the commissioner may, upon the commissioner's determination, issue an order requiring the insurer to increase the insurer's capital and surplus based on the type, volume, and nature of the business transacted. [Acts 1935, ch. 162, § 75, p. 588; 1955, ch. 316, § 2; 1967, ch. 127, § 3; 1977, P.L. 282, § 2; P.L.116-1994, § 20; P.L.130-1994, § 15.]

Compiler's Notes. Section 5 of Acts 1977, P.L. 282 provided that any company obtaining a permit prior to July 1, 1977 to complete organization was exempt from the requirements of the 1977 amendment to this section.

Cross References. Applicability to farmers' mutuals, IC 27-5-3.

Cited: Allen v. Pavach, 263 Ind. 574, 49 Ind. Dec. 145, 335 N.E.2d 219 (1975).

NOTES TO DECISIONS

Constitutionality.

This section does not violate the constitutional provision, Ind. Const. Art. I, § 24, that there shall never be passed a law which impairs the obligation of contracts. Gibraltar

Mut. Ins. Co. v. Hoosier Ins. Co., 486 N.E.2d 548 (Ind. App. 1985), modified on reh'g to clarify a statement regarding guaranty associations, 489 N.E.2d 592 (Ind. App. 1986).

27-1-6-16. Companies writing multiple lines of insurance. —

(a) [Omitted by amendment.]

(b) [Omitted by amendment.]

(c) The charter powers and licenses of any domestic insurers authorized to market one or more kinds of insurance or reinsurance under Class II or Class III and meeting the requirements set out in section 14 or 15 [IC 27-1-6-14 or IC 27-1-6-15] of this chapter may be broadened and extended hereunder to include the right, power and authority to make any one or more of the kinds of insurance and reinsurance specified in both Class II and Class III of IC 27-1-5-1.

(d) [Omitted by 1977 amendment.]

(e) Any domestic company authorized to insure against loss or damage by fire, which has been actively engaged in the fire insurance business continuously for ten (10) years or more, or whose predecessor or predecessors, if any prior to merger or consolidation, shall have been so engaged for such period, may, if it complies with the provisions of this subsection (e) and without complying with the capitalization and surplus requirements of

section 14 or section 15 of this chapter, insure against loss or damage to dwellings and appurtenant structures and to the contents thereof and any other personal property of a similar nature of the insured or of the members of his household, resulting from any peril, and may, in connection with making such insurance, also make insurance against the legal liability of the insured or of the members of his household, and for any medical, surgical and hospital expenses of any person other than the insured or such members, arising out of nonbusiness pursuits of the insured or such members or out of the condition of, or acts performed by the insured or such members on such dwellings and appurtenant structures and the real estate on which each is located. Where a company is entitled to make such additional insurance solely by virtue of this subsection (e), it shall not make such insurance unless it has made reinsurance arrangements satisfactory to the commissioner whereby all of such additional insurance is reinsured with a company which is qualified under IC 27-1 to make reinsurance of such additional kind of insurance. The charter powers and licenses of any domestic insurer meeting the requirements set out in this subsection (e) may be broadened and extended hereunder to include the right, power and authority to make any one or more of the kinds of insurance permitted by this subsection.

(f) No policy issued by a mutual company including a farmer's mutual insurance company, shall be required to contain a provision limiting the time within which suit against the insurer on such policy must be filed. [Acts 1935, ch. 162, § 75½, as added by Acts 1947, ch. 50, § 1; 1957, ch. 265, § 2; 1967, ch. 233, § 2; 1977, P.L. 282, § 3.]

Compiler's Notes. Section 5 of Acts 1977, P.L. 282 provided that any company obtaining a permit prior to July 1, 1977 to complete organization was exempt from the requirements of the 1977 amendment to this section.

Cross References. Applicability to farmers' mutual insurance companies, IC 27-5-3.

Opinions of Attorney General. This section is not limited to corporations, but applies to "all domestic insurers who comply with" IC

27-1-2-1 — IC 27-1-20-32. 1948, No. 36, p. 212.

A reciprocal or interinsurance exchange organized under IC 27-6-6-1 — IC 27-6-6-15, IC 27-6-7-1, is eligible to make multiple line coverage, but the application should cover the kind or kinds of insurance to be effected or exchanged. 1948, No. 36, p. 212.

Cited: Allen v. Pavach, 263 Ind. 574, 49 Ind. Dec. 145, 335 N.E.2d 219 (1975).

NOTES TO DECISIONS

In General.

Acts 1889, ch. 95, p. 346, contemplated that the sum of \$20,000 be paid from applications for insurance before an insurance company could issue policies, and not that the promoters of such company could deposit such sum under arrangement for repaying same. Welliver v. Coate, 65 Ind. App. 195, 114 N.E. 775 (1917).

Where the promoters of an insurance company misinterpreted Acts 1889, ch. 95, p. 346, and deposited \$20,000 for account of the com-

pany, and later the company, in good faith, paid back a part of such deposit, the receiver of the company could not recover such payments on the ground that the transaction was ultra vires. Welliver v. Coate, 65 Ind. App. 195, 114 N.E. 775 (1917).

Under a prior similar provision, cash payment of the premium was satisfied by payment to the company's agent at the time of the delivery of the policy. Meridian Mut. Fire Ins. Co. v. Deffendoll, 74 Ind. App. 501, 129 N.E. 253 (1920).

27-1-6-17. Examination and investigation. — The commissioner may, personally or through his deputies and assistants, examine into the affairs

of any such proposed company and inspect its books and papers, and may summon and examine under oath any officer or agent or any person who is or has been connected with such company, and if he finds the company is violating the law, or if the company shall not be qualified for a certificate of authority within one (1) year from date of its permit, he may revoke its permit; and if he finds an agent of such company has violated the law, he may revoke his authority, and he may for such agent's violation revoke the company's permit. Any revocation shall be after notice and hearing. The commissioner may renew any company's permit or agent's authority which he has revoked. [Acts 1935, ch. 162, § 76, p. 588.]

27-1-6-18. Issuance of certificate of authority. — When the provisions of sections 2 through 17 [IC 27-1-6-2 — IC 27-1-6-17] of this chapter have been complied with, and the department has made an investigation and examination as required in section 17 [IC 27-1-6-17], then the commissioner may issue a certificate of authority under IC 27-1-3-20, which shall license the company to transact only the kind or kinds of insurance specified in its articles of incorporation. The company shall file a certified copy of such certificate of authority for record with the county recorder of the county wherein the principal office is located, which certified copy shall be evidence only that the company is authorized and licensed to transact the class or classes of insurance set out therein. [Acts 1935, ch. 162, § 77, p. 588; 1977, P.L. 283, § 1.]

Cross References. Certificate of authority prerequisite to doing business, IC 27-1-3-20.

27-1-6-19. Organization meetings. — (a) If the articles of incorporation provide for the adoption of the bylaws by the shareholders, members, or policyholders, the incorporators or a majority of them after the issuance of the certificate of authority, shall call a meeting of the shareholders, members, or policyholders for the purpose of adopting the bylaws, giving at least ten (10) days' notice by mail to each shareholder, member, or policyholder entitled to vote at the time and place of such meeting, unless the giving of such notice be waived in writing by any or all of such shareholders, members, or policyholders, in which case notice shall be given only to such shareholders, members, or policyholders who have not so waived such notice. Such shareholders, members, or policyholders shall meet at the time and place designated and shall adopt the bylaws. After the adoption of such bylaws, the directors named in the articles of incorporation as the first board of directors shall meet at the call of a majority thereof and shall elect officers and transact such other business as may properly come before such board.

(b) If the articles of incorporation do not provide for the adoption of the bylaws by the shareholders, members, or policyholders, then, after the issuance of the certificate of authority, the directors named in the articles as the first board of directors shall meet at the call of a majority thereof, adopt the bylaws, elect officers, and transact such other business as may properly come before such board. [Acts 1935, ch. 162, § 78, p. 588; P.L.252-1985, § 24.]

Cross References. Bylaws, provisions, IC 27-1-7-6.

Directors, qualifications and duties, IC 27-1-7-10 — IC 27-1-7-12.

27-1-6-20. [Repealed.]

Compiler's Notes. This section, a savings clause for corporations created prior to the

effective date of Acts 1967, ch. 127, was repealed by P.L.108-1985, § 1.

CHAPTER 6.5

REDOMESTICATION OF INSURERS

SECTION.

- 27-1-6.5-1. Domestication — Requirements — Issuance of certificate of authority — Effect.
 27-1-6.5-2. Transfer of domicile by domestic insurance company.
 27-1-6.5-3. Change of domicile by foreign insurance company.

SECTION.

- 27-1-6.5-4. Notice of proposed transfer of domicile — Filing of amendments to corporate documents.
 27-1-6.5-5. Effect of transfer on existing filings and approvals.
 27-1-6.5-6. Regulations.

27-1-6.5-1. Domestication — Requirements — Issuance of certificate of authority — Effect. — (a) Any foreign insurance company which is admitted to transact business in Indiana may, upon complying with the requirements for formation of a domestic company under IC 27-1-6, become a domestic insurer. When those requirements have been met, the commissioner may issue a certificate of authority, under IC 27-1-3-20, to permit the company to transact business in the state as a domestic company.

(b) A company which changes its status from foreign to domestic under subsection (a) has all the rights, titles, and interests in the assets of the original corporation, as well as all of its liabilities and obligations. The company shall be recognized as a company formed under the laws of this state as of the date of its incorporation in its original domiciliary state. [IC 27-1-6.5-1, as added by Acts 1980, P.L. 170, § 1.]

27-1-6.5-2. Transfer of domicile by domestic insurance company. — Any domestic insurance company may, upon the approval of the commissioner, transfer its domicile from this state to any other state in which it is admitted to transact business. The commissioner shall approve the proposed transfer of domicile, unless he determines that the transfer is contrary to the best interests of the company's policyholders. If the commissioner does not approve the transfer, he shall give the company written notice of the refusal and the reasons for it within thirty (30) days after the date the request for transfer was made. If the request for transfer is granted, and the company is otherwise qualified, it may operate in this state as a foreign insurer without interruption in licensing. [IC 27-1-6.5-2, as added by Acts 1980, P.L. 170, § 1.]

27-1-6.5-3. Change of domicile by foreign insurance company. — Any foreign insurance company admitted to transact business in this state may, upon proper notice to the commissioner, change its domicile by merger,

consolidation, or otherwise to another foreign state without interruption of its licensing and without reapplying as a foreign insurer if:

- (1) The change in domicile does not result in a reduction in the company's assets or surplus below the requirements for admission as a foreign insurer under IC 27-1-17-5;
- (2) There is no substantial change in the lines of insurance to be written by the company; and
- (3) The change in domicile has been approved by the supervising regulatory officials of both the former and new state of domicile. [IC 27-1-6.5-3, as added by Acts 1980, P.L. 170, § 1.]

27-1-6.5-4. Notice of proposed transfer of domicile — Filing of amendments to corporate documents. — Each insurer admitted to transact business in this state that transfers its domicile to any other state shall notify the commissioner of the proposed transfer and shall file promptly with him any necessary amendments to articles of incorporation, charters, bylaws, and other corporate documents. [IC 27-1-6.5-4, as added by Acts 1980, P.L. 170, § 1.]

27-1-6.5-5. Effect of transfer on existing filings and approvals. — When any insurer admitted to transact business in this state transfers its domicile to this or any other state, its certificate of authority, agents' appointments and licenses, policy forms, rates, authorizations, and other filings and approvals which existed at the time of the transfer, remain in effect after the transfer of domicile occurs. [IC 27-1-6.5-5, as added by Acts 1980, P.L. 170, § 1.]

27-1-6.5-6. Regulations. — The commissioner may develop and promulgate regulations, under IC 4-22-2, to carry out the purposes of this chapter. [IC 27-1-6.5-6, as added by Acts 1980, P.L. 170, § 1.]

CHAPTER 7

INSURANCE LAW — INSURANCE COMPANIES — GENERAL PROVISIONS

SECTION.

- 27-1-7-1. "Corporation" defined.
- 27-1-7-2. General powers.
- 27-1-7-3. Principal office.
- 27-1-7-4. Shares of capital stock.
- 27-1-7-5. Evidence of stock ownership.
- 27-1-7-6. Bylaws.
- 27-1-7-7. Meetings — Action taken without meeting.
- 27-1-7-8. Voting at shareholders' meetings.
- 27-1-7-9. Voting at policyholders' and members' meetings.
- 27-1-7-9.5. Derivative proceedings by shareholders.
- 27-1-7-10. Directors.
- 27-1-7-11. Qualifications of directors.
- 27-1-7-12. Duties of directors.
- 27-1-7-12.5. Good faith discharge of director's duties — Standard of

SECTION.

- care — Liability — Conflict of interest transactions.
- 27-1-7-13. Officers.
- 27-1-7-14. Bonds of officers.
- 27-1-7-15. Loans to officers and directors — Penalties — Exceptions.
- 27-1-7-16. Books and records.
- 27-1-7-17. Dividends.
- 27-1-7-18. [Repealed.]
- 27-1-7-19. Provision of surplus funds — Rate of interest.
- 27-1-7-20. Right to hold policies.
- 27-1-7-21. Maximum and contingent premiums — Mutual companies.
- 27-1-7-22. Disbursements — Vouchers.
- 27-1-7-23. False annual or other statements — Penalty.

27-1-7-1. "Corporation" defined. — The term "corporation," as used in this chapter and IC 27-1-8, means any company organized or reorganized under the provisions of this article and any company organized or reorganized under the provisions of any statute of this state enacted prior to March 8, 1935. [Acts 1935, ch. 162, § 79, p. 588; P.L.252-1985, § 25.]

Cross References. General provisions concerning insurance companies formed under specific laws, see enumeration of companies under IC 27-1-5-1.

Membership in life and health insurance guaranty association required, IC 27-8-8.

27-1-7-2. General powers. — (a) Every corporation has the capacity to act that is possessed by natural persons, but has the authority to perform only those acts that are necessary, convenient, or expedient to accomplish the purposes for which it is formed and that are not repugnant to law.

(b) Subject to any limitations or restrictions imposed by law or the articles of incorporation, each corporation has the following general rights, privileges, and powers:

(1) To continue as a corporation, under its corporate name, for the period set forth in its articles of incorporation.

(2) To sue and be sued in its corporate name.

(3) To have a corporate seal and to alter the same at pleasure.

(4) To acquire, own, hold, lease, mortgage, pledge, convey, or otherwise dispose of property, real and personal, tangible and intangible.

(5) To acquire, subscribe for, own, hold, vote, mortgage, lend, pledge, convey, or otherwise dispose of, and to guarantee or otherwise deal in and with, shares or other interests in, or obligations of, any entity, including itself, except as otherwise prohibited or limited by this article.

(6) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

(7) To borrow money, and to issue its notes or debentures to evidence such borrowings, but any debentures so issued shall be subordinate to the rights of policyholders, members, or creditors of such corporations.

(8) To conduct business in this state and elsewhere; to have one (1) or more offices out of this state; to acquire, own, hold and use, and to lease, mortgage, pledge, sell, convey, or otherwise dispose of property, real and personal, tangible and intangible, out of this state.

(9) To appoint such officers and agents as the business of the corporation may require, and to define their duties and fix their compensation.

(10) To lend money, invest and reinvest its funds, and receive and hold real estate and personal property as security for repayment, except as otherwise limited in this title.

(11) To pay pensions and establish and administer pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, welfare plans, qualified and nonqualified retirement plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

(12) To make donations for the public welfare or for charitable, scientific, or education purposes.

(13) To make bylaws for the government and regulation of its affairs.

(14) To cease doing business and to dissolve and surrender its corporate franchise and authority and license to transact an insurance business in this state.

(15) To do all acts and things necessary, convenient, or expedient to carry out the purposes for which it is formed.

(16) To become a member of any federal home loan bank; to purchase stock therein, to borrow money or obtain advances from any such bank and to transfer, assign, and pledge property to or with such bank as security for the payment of such loans or advances, to do and perform all acts required of members of a federal home loan bank, and to possess and exercise all rights, powers, and privileges conferred upon such members under the provisions of the act of Congress entitled Federal Home Loan Bank Act.

(c) No corporation shall, by any implication or construction, be deemed to possess the power of carrying on the business of receiving deposits of money, bullion, or foreign coins, or receiving deposits of securities or other personal property from any person or corporation or acting as a safe deposit company, or of issuing bills, notes, or other evidences of debt for circulation as money.

(d) A corporation that is a stock company may establish one (1) or more procedures by which it regulates transactions that would, when consummated, result in a change of control of such corporation.

(e) For purposes of this section "control" means:

(1) For any corporation having one hundred (100) or more shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than ten percent (10%) of the voting shares of a corporation's outstanding voting shares; or

(2) For any corporation having fewer than one hundred (100) shareholders, the beneficial ownership, or the direct or indirect power to direct the voting, of no less than fifty percent (50%) of the voting shares of the corporation's outstanding voting shares.

(f) A procedure established under this section may be adopted:

(1) In a corporation's original articles of incorporation or bylaws;

(2) By amending the articles of incorporation; or

(3) Notwithstanding that a vote of the shareholders would otherwise be required by any other provision of this article or the articles of incorporation for the adoption or implementation of all or any portion of the procedure, by amending the bylaws. [Acts 1935, ch. 162, § 80, p. 588; 1939, ch. 63, § 1, p. 419; 1973, P.L. 271, § 1; P.L.266-1987, § 1.]

Compiler's Notes. The Federal Home Loan Bank Act, referred to in subdivision

(b)(16), may be found at 12 U.S.C. § 1421 et seq.

NOTES TO DECISIONS

ANALYSIS

In general.
Settlement of liability.

In General.

Agreement whereby mutual casualty company delegated its managerial powers and, in effect, its entire policy to another corporation

In General. (Cont'd)

for 20 years, so that casualty company became mere instrumentality through which other corporation conducted casualty insurance business, was void as transcending spirit on which corporate franchises are based. *Sherman & Ellis, Inc. v. Indiana Mut. Cas. Co.*, 41 F.2d 588 (7th Cir.), cert. denied, 282 U.S. 893, 51 S. Ct. 107, 75 L. Ed. 787 (1930).

Settlement of Liability.

Under subsection (b)(10) of this section, an insurance company has the power to make loans and adjustments in the settlement of their liability to an insured person. *Klukas v. Yount*, 121 Ind. App. 160, 98 N.E.2d 227 (1951).

27-1-7-3. Principal office. — Each corporation shall maintain an office or place of business in this state, to be known as the "Principal Office." The post-office address of the principal office shall be stated in the original articles of incorporation at the time of incorporating. Thereafter, the location of the principal office, may be changed at any time or from time to time when authorized by the board of directors by:

- (1) filing with the department and secretary of state, on or before the day any change is to take effect, a certificate signed by the president or a vice-president and the secretary or an assistant secretary of the corporation, and verified under oath, stating the change to be made and reciting that such change is made pursuant to authorization by the board of directors; and
- (2) notifying each policyholder of the address and telephone number of the new location. [Acts 1935, ch. 162, § 81, p. 588; P.L.94-1999, § 1.]

Cross References. Books and records to be kept at principal office, IC 27-1-7-16.

Certified copy of certificate of merger or certificate of consolidation and incorporation, filing in county where principal office located, IC 27-1-9-6.

Filing and recording of articles of reorganization in county where principal office is located, IC 27-1-11-6.

Foreign company reorganized under Indiana law, IC 27-1-19-7.

27-1-7-4. Shares of capital stock. — (a) Every stock company organized under this article shall have the right, when authorized by its articles of incorporation, to issue one (1) or more classes or kinds of shares of capital stock, any or all of which classes or kinds may consist of shares with par value or shares without par value, with full, limited, or no voting powers as provided in the articles of incorporation and with such designations, and such relative rights, preferences, qualifications, limitations, or restrictions as shall be stated and expressed in the articles of incorporation.

(b) No stock company organized under this article shall issue or sell any of its shares of stock having a par value for less than the par value thereof.

(c) The shareholders of any stock company organized under this article shall be liable for the debts of such stock company only to the extent of any unpaid portion of their subscriptions for shares of such company or any unpaid portion of the consideration for the issuance to them of shares of such stock company.

(d) The shareholders of such stock company shall not have preemptive rights to subscribe to any additional issues of shares of the capital stock of such company, except to the extent, if any, that such rights shall be fixed and prescribed in the articles of incorporation, or in a bylaw adopted by the

board of directors of such stock company. [Acts 1935, ch. 162, § 82, p. 588; 1969, ch. 164, § 3; P.L.252-1985, § 26.]

Cross References. Decrease of capital stock, IC 27-1-8-12.

Exchange with other companies or corporations, IC 27-3-1-1 — IC 27-3-1-7.

Increase of capital stock, IC 27-1-12-4.

Opinions of Attorney General. Subject to the limitations of IC 27-1-6-14, a life insur-

ance company did not violate this section by taking promissory notes for its sales of stock, if proper action was taken to authorize receipt of notes in payment for stock, and there was reasonable ground for believing that they were good and collectible. 1940, p. 7.

27-1-7-5. Evidence of stock ownership. — In the case of a stock company, every shareholder shall be entitled to a certificate, or other evidence of stock ownership, signed by the president or a vice president and by the secretary or an assistant secretary, which shall state the name of the registered holder, the number of shares represented thereby and the par value of each share. Where such certificate is also signed by a transfer agent or registrar, or both, the signatures of any such president, vice president, secretary or assistant secretary may be facsimiled. The shares represented thereby shall be transferable on the books of the company in such manner and under such regulations, not inconsistent with the laws of this state relating to the transfer of shares of stock in corporations, as may be provided in the by-laws. If such company is authorized to issue shares of more than one class, every certificate shall state the kind and class of shares represented thereby, and the relative rights, interests, preferences and restrictions of such class, or a summary thereof. [Acts 1935, ch. 162, § 83, p. 585; 1963, ch. 144, § 1.]

27-1-7-6. Bylaws. — Unless otherwise provided in the articles of incorporation, the power to make, alter, amend or repeal the bylaws of a company is hereby vested in the board of directors. The bylaws so adopted may contain any provision for the regulations and management of the affairs of the corporation which is not inconsistent with this article or of any law of this state or with the articles of incorporation and may include provisions concerning:

- (a) The time and place of holding, and the manner of conducting meetings of the shareholders, members, or policyholders, and of directors;
- (b) The manner of calling special meetings of shareholders, members, or policyholders and directors;
- (c) The powers, duties, tenure, and qualifications of the officers of the corporation and the time, place, and manner of electing them;
- (d) The creation and appointment of executive or other committees and the number of members thereof and prescribing their powers;
- (e) The classification of its risks and of its members, the payment of dividends and the creation of a surplus fund or funds, if other than a stock company; and
- (f) The form of stock certificates or other evidences of stock ownership and the manner of transferring shares of capital stock if a stock company, and the manner of creating and exercising proxies. [Acts 1935, ch. 162, § 84, p. 588; P.L.252-1985, § 27.]

Cross References. Adoption of bylaws by directors, IC 27-1-6-19.

27-1-7-7. Meetings — Action taken without meeting. — (a) All meetings of shareholders, members, or policyholders shall be held within this state and at the principal office of the corporation, unless otherwise provided in the articles of incorporation.

(b) An annual meeting of shareholders, members, or policyholders shall be held within five (5) months after the close of each fiscal year of the corporation and at such time within that period as the bylaws may provide. The failure to hold the annual meeting at the designated time shall not work any forfeiture or a dissolution of the corporation. The time and place of such annual meeting of a mutual company may be stated in the policies thereof or notice of such meeting shall be given as provided in subsection (d).

(c) Special meetings of the shareholders, members, or policyholders may be called by the president, by the board of directors, by shareholders, members, or policyholders holding not less than one-fourth ($\frac{1}{4}$) of all of the shares or policies outstanding and entitled by the articles of incorporation to vote on the business proposed to be transacted thereat, or by such other officers or persons as the bylaws may provide.

(d) A written or printed notice stating the place, day, and hour of the meeting, and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the secretary, or by the officers or persons calling the meeting, to each shareholder, member, or policyholder of record, entitled by the articles of incorporation and by this article to vote at such meeting, at such address as appears upon the records of the corporation, at least thirty (30) days before the date of the meeting. Notice of any meeting of the shareholders, members, or policyholders may be waived in writing by any shareholder, member, or policyholder if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

(e) Unless otherwise provided in the articles of incorporation or by the provisions of this article or the bylaws, at any meeting of the shareholders, members, or policyholders, a majority of the shares of the outstanding capital stock entitled by the articles of incorporation to vote at such meeting or in the case of a company other than a stock company, not less than ten percent (10%) of the policyholders or members entitled to vote at such meeting, represented in person or by proxy, shall constitute a quorum.

(f) Unless otherwise provided in the articles of incorporation or bylaws, action to be taken at a meeting of shareholders, members, or policyholders may be taken without a meeting if the action is taken by all the shareholders, members, or policyholders entitled to vote on the action. The action must be evidenced by one (1) or more written consents that:

- (1) describe the action taken;
- (2) are signed by all the shareholders, members, or policyholders entitled to vote on the action; and
- (3) are delivered to the corporation for inclusion in the minutes or for filing with the corporate records.

(g) The record date for determining shareholders, members, or policyholders entitled to take action without a meeting is the date the first shareholder, member, or policyholder signs the consent under subsection (f).

(h) Action taken under subsection (f) is effective when the last shareholder, member, or policyholder signs the consent, unless the consent specifies a different prior or subsequent effective date.

(i) A consent signed under subsection (f) has the effect of a meeting vote and may be described as a meeting vote in any document. [Acts 1935, ch. 162, § 85, p. 588; 1965, ch. 6, § 1; P.L.252-1985, § 28; P.L.185-1997, § 1.]

Cross References. Provisions of bylaws, Voting at shareholders' meetings, IC 27-1-7-6. 7-8.

Proxy voting, IC 27-1-7-9.

Voting at policyholders' and members' meetings, IC 27-1-7-9.

27-1-7-8. Voting at shareholders' meetings. — (a) Except as otherwise provided in the articles of incorporation or in this section, every shareholder in a stock insurance company shall have the right, at every shareholders' meeting, to one (1) vote for each share standing in his name on the books of the corporation. No share shall be voted at any meeting:

(1) Which shall have been transferred on the books of the corporation within such number of days, not exceeding fifty (50), next preceding the date of such meeting as the board of directors shall determine, or, in the absence of such determination, within ten (10) days next preceding the date of such meeting; or

(2) Which belongs to the corporation that issued it.

(b) Shares standing in the name of a corporation, other than the issuing corporation, may be voted by such officer, agent or proxy as the board of directors of such corporation may appoint or as the by-laws of such corporation may prescribe.

(c) Shares held by fiduciaries may be voted by the fiduciaries in such manner as the instrument or order appointing such fiduciaries may direct. In the absence of such direction, or the inability of the fiduciaries to act in accordance therewith, the following provisions shall apply:

(1) Where shares are held jointly by three (3) or more fiduciaries, such shares shall be voted in accordance with the will of the majority.

(2) Where the fiduciaries, or a majority of them, can not agree, or where they are equally divided upon the question of voting such shares, any court having general equity jurisdiction may, upon petition filed by any of such fiduciaries, or by any party in interest, direct the voting of such shares as it may deem to be for the best interest of the beneficiaries, and such shares shall be voted in accordance with such direction.

(d) Unless otherwise provided in the agreement of pledge, or in the by-laws of the corporation, shares that are pledged may be voted by the shareholder pledging such shares until the shares shall have been transferred to the pledgee on the books of the corporation, and thereafter such shares may be voted by the pledgee.

(e) Shares issued and held in the names of two (2) or more persons shall be voted in accordance with the will of the majority, and if a majority of them

can not agree, or if they are equally divided as to the voting of such shares, the shares shall be divided equally between or among such persons for voting purposes.

(f) A shareholder, including any fiduciary, may vote either in person or by proxy executed in writing by the shareholder or a duly authorized attorney in fact. Unless a longer time is expressly provided therein, no proxy shall be valid after eleven (11) months from the date of its execution. [Acts 1935, ch. 162, § 86, p. 588; 1981, P.L. 234, § 1.]

27-1-7-9. Voting at policyholders' and members' meetings. — Except as otherwise provided in the articles of incorporation every policyholder or member, in all companies other than stock companies, shall have the right to one (1) vote at every policyholders' or members' meeting, regardless of the number of policies or amount of insurance he may have with such company.

Any policyholder or member may vote either in person or by proxy executed in writing by the policyholder or by a duly authorized attorney in fact. Unless a longer time is expressly provided therein, no proxy hereafter given shall be valid after eleven (11) months from the date of its execution. [Acts 1935, ch. 162, § 87, p. 588.]

27-1-7-9.5. Derivative proceedings by shareholders. — (a) As used in this section, "shareholder" includes:

- (1) With respect to a stock company formed under this article, a shareholder or a beneficial owner whose shares are held in a voting trust or held by a nominee on the owner's behalf; and
- (2) With respect to a mutual company formed under this article, a member or policyholder.

(b) A person may not commence a proceeding in the right of a corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding may not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.

(c) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors, and either that the demand was refused or ignored or why the shareholder did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint (including an investigation commenced under subsection (e)), the court may stay any proceeding until the investigation is completed.

(d) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected. On termination of the

proceeding, the court may require the plaintiff to pay any defendant's reasonable expenses (including attorney's fees) incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(e) Unless prohibited by the articles of incorporation, the board of directors may establish a committee consisting of three (3) or more disinterested directors or other disinterested persons to determine:

(1) Whether the corporation has a legal or equitable right or remedy; and

(2) Whether it is in the best interests of the corporation to pursue that right or remedy, if any, or to dismiss a proceeding that seeks to assert that right or remedy on behalf of the corporation.

(f) In making a determination under subsection (e), the committee is not subject to the direction or control of or termination by the board. A vacancy on the committee may be filled by the majority of the remaining members by selection of another disinterested director or other disinterested person.

(g) If the committee determines that pursuit of a right or remedy through a derivative proceeding or otherwise is not in the best interests of the corporation, the merits of that determination shall be presumed to be conclusive against any shareholder making a demand or bringing a derivative proceeding with respect to such right or remedy, unless such shareholder can demonstrate that:

(1) The committee was not disinterested, as described in subsection (h); or

(2) The committee's determination was not made after an investigation conducted in good faith.

(h) For purposes of this section, a director or other person is disinterested if the director or other person:

(1) Has not been made a party to a derivative proceeding seeking to assert the right or remedy in question, or has been made a party but only on the basis of a frivolous or insubstantial claim or for the sole purpose of seeking to disqualify the director or other person from serving on the committee;

(2) Is able under the circumstances to render a determination in the best interests of the corporation; and

(3) Is not an officer, employee, or agent of the corporation or of a related corporation. However, an officer, employee, or agent of the corporation or a related corporation who meets the standards of subdivisions (1) through (2) shall be considered disinterested in any case in which the right or remedy under scrutiny is not assertable against a director or officer of the corporation or the related corporation. [P.L.266-1987, § 2.]

27-1-7-10. Directors. — (a) The business of every corporation shall be managed by a board of directors, composed of not less than five (5) nor more than the maximum number fixed in the articles of incorporation. The exact number of directors to serve for each year shall be determined from time to time, in such manner as the bylaws prescribe.

(b) The first board of directors shall be elected by the incorporators and shall hold office until the first annual meeting of the shareholders, members

or policyholders. At the first annual meeting of the shareholders, members or policyholders, and at each annual meeting thereafter, directors shall be elected by the shareholders, members or policyholders for the term or terms hereinafter prescribed.

(c) The articles of incorporation or the bylaws may provide that the directors may be divided into two (2) or more classes whose terms of office expire at different times, but no term shall continue longer than six (6) years. In the absence of such provision, each director, except members of the first board of directors, shall be elected for a term of one (1) year and shall hold office until the director's successor is elected and has qualified.

(d) Any vacancy which may occur in the membership of the board of directors, caused by an increase in the number of directors or otherwise (except death, resignation, or disqualification), shall be filled by a majority vote of the remaining members of the board, until the next annual meeting of the shareholders, members or policyholders. A vacancy in the membership in the board of directors caused by death, resignation or disqualification of a member shall be filled by a majority vote of the remaining membership of the board for the unexpired term of the directorship.

(e) A majority of the whole board of directors is necessary to constitute a quorum for the transaction of any business except the filling of vacancies, and the act of a majority of the board of directors present at any meeting at which a quorum is present is the act of the board of directors, unless a greater number is required by this article, or by the articles of incorporation or the bylaws.

(f) The board of directors may, by a resolution adopted by a majority of the whole board, pursuant to a provision of the bylaws, designate two (2) or more of their number to constitute an executive committee, which, to the extent provided in that resolution or in the bylaws, has all of the authority of the board of directors in the management of the corporation, during the interval between the meetings of the board, but the designation of the committee and the delegation to the committee of such authority does not operate to relieve the board of directors or any member of the board of directors of any responsibility imposed upon it or the member by this article. The minutes of each meeting of the executive committee shall be read at the next succeeding meeting of the board of directors.

(g) Meetings of the board of directors may be held at such time at the principal office of the corporation or at such other place as may be unanimously designated by the board of directors, and upon the notice provided in the bylaws. Unless otherwise provided by the articles of incorporation or bylaws, a member of the board of directors or of a committee designated by the board may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other, and participation by these means constitutes presence in person at the meeting.

(h) Unless otherwise provided in the articles of incorporation or bylaws, an action required or permitted to be taken at a meeting of the board of

directors or of a committee of the board may be taken without a meeting if:

- (1) Before the action is taken, a written consent to the action is signed by all members of the board or of the committee; and
- (2) The written consent is filed with the minutes of the proceedings of the board or the committee.

(i) Every director, when elected, shall take and subscribe an oath that he will, insofar as the duty devolves upon him, faithfully, honestly and diligently administer the affairs of such corporation, and that he will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to any such corporation.

(j) A director may be removed in any manner provided by the articles of incorporation. Unless the articles of incorporation provide otherwise, a director may be removed, with or without cause, by a majority vote of:

- (1) The shareholders of a stock company;
- (2) The members or policyholders of a mutual company qualified to elect directors; or
- (3) The directors.

(k) A director may be removed under this subsection:

- (1) Only at a meeting called for the purpose of removing the director; and
- (2) The meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director. [Acts 1935, ch. 162, § 88, p. 588; 1969, ch. 164, § 4; 1971, P.L. 1, § 7; 1982, P.L. 161, § 1; P.L.266-1987, § 3.]

Cross References. First board of directors, IC 27-1-6-19.

Indemnification of directors authorized, IC 27-1-7-2.

Loans to directors prohibited, IC 27-1-7-15.

Restrictions on dealing in equity securities, IC 27-2-10.

27-1-7-11. Qualifications of directors. — A majority of directors must, during their entire terms of service, be citizens of the United States or Canada. At least one (1) of the directors must reside in Indiana. [Acts 1935, ch. 162, § 89, p. 588; 1941, ch. 127, § 1, p. 365; 1947, ch. 18, § 1; 1969, ch. 164, § 5; P.L.245-1989, § 1.]

Cross References. Notice to commissioner of new directors for determination of qualifications, IC 27-1-3-20.

27-1-7-12. Duties of directors. — In addition to such other duties as may be imposed upon the directors by any other provisions of this article, such directors shall keep a record of the attendance of directors at meetings of the board, and shall make a report showing the names of the directors, the number of meetings of the board, regular and special, the number of meetings attended, and the number of meetings from which each director was absent, which report shall be read at and incorporated in the minutes of the annual meeting of the shareholders, members, or policyholders. Such directors, at such times as they are meeting as a board of directors, shall also require the secretary of such board, or some other duly designated agent, to make such communications from the department as the depart-

ment designates a matter of record in the minutes of the meetings of such board of directors. The board of directors, a committee therefrom, or the auditor, actuary, or comptroller of such corporation shall examine the corporation once each year and submit a complete statement of the condition of such corporation to the department. Such report of examination, if made by other than the board of directors or a committee thereof, shall be approved by the board of directors before the same is submitted to the department. [Acts 1935, ch. 162, § 90, p. 588; P.L.252-1985, § 29.]

Cross References. Adoption of bylaws, IC 27-1-6-19. Amendment to articles, proposal by directors, IC 27-1-8-2.

27-1-7-12.5. Good faith discharge of director's duties — Standard of care — Liability — Conflict of interest transactions. — (a) A director shall, based on facts then known to the director, discharge the duties as a director, including the director's duties as a member of a committee:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging the director's duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director may, in considering the best interests of a corporation, consider the effects of any action on shareholders, members, policyholders, agents, employees, suppliers, and customers of the corporation, and the communities in which offices or other facilities of the corporation are located, and any other factors the director considers pertinent.

(e) A director is not liable for any action taken as a director, or any failure to take any action, unless:

- (1) The director has breached or failed to perform the duties of the director's office under subsections (a) through (d); and
- (2) The breach or failure to perform constitutes willful misconduct or recklessness.

(f) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one (1) of the following is true:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.

(2) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(3) The transaction was fair to the corporation.

(g) For purposes of subsection (f), a director of the corporation has an indirect interest in a transaction if:

(1) Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction; or

(2) Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is, or is required to be, considered by the board of directors of the corporation.

(h) For purposes of subsection (f)(1), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors (or on the committee) who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection (f)(1) if the transaction is otherwise authorized, approved, or ratified as provided in subsection (f)(1).

(i) For purposes of subsection (f)(2), shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (g), may be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction.

(j) Subject to subsection (e), a director who votes for or assents to a payment in the form of a dividend or otherwise to the corporation's shareholders made in violation of this article or the articles of incorporation is personally liable to the corporation for the amount of the payment that exceeds what could have been paid without violating this article or the articles of incorporation.

(k) A director held liable for an unlawful payment under subsection (j) is entitled to contribution:

(1) From every other director who voted for or assented to the distribution, subject to subsection (e); and

(2) From each shareholder for the amount the shareholder accepted.

(l) The purchase and holding of a contract of insurance or annuity or a certificate in a group policy by a director does not constitute a conflict of interest. [P.L.266-1987, § 4.]

27-1-7-13. Officers. — (a) A corporation has the officers described in its bylaws. However, a corporation must have at least one (1) officer.

(b) An officer of a corporation may appoint one (1) or more officers or assistant officers if authorized to do so by the bylaws or the board of directors.

(c) The bylaws or the board of directors must delegate to one (1) of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation, and that officer is the secretary for purposes of this article. The same individual may simultaneously hold more than one (1) office in the corporation.

(d) Each officer of a corporation has the authority and shall perform the duties set forth in the bylaws, to the extent consistent with the bylaws or, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

(e) An officer of a corporation may resign at any time by delivering notice to the board of directors, its chairman, the secretary of the corporation or, if the articles of incorporation or bylaws so provide, to another designated officer. A resignation is effective when the notice is delivered unless the notice specifies a later date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(f) The board of directors of a corporation may remove an officer of the corporation at any time with or without cause. An officer who appoints another officer or assistant officer may remove the appointed officer or assistant officer at any time with or without cause.

(g) The election or appointment of an officer of a corporation does not itself create contract rights.

(h) The removal of an officer of a corporation does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer. [Acts 1935, ch. 162, § 91, p. 588; P.L.266-1987, § 5.]

Compiler's Notes. The comma following "consistent with the bylaws or" in subsection (d) appears to be incorrectly placed, and probably should precede the word "or." Nevertheless, this section is set out as it appears in P.L.266-1987, § 5.

Cross References. Bylaws, provisions, IC 27-1-7-6.

Notice to commissioner of new officers for determination of qualifications, IC 27-1-3-20.

Restrictions on dealing in stock or securities, IC 27-2-10.

Statement of stock ownership required, IC 27-2-10-1.

27-1-7-14. Bonds of officers. — All officers and home office employees of every corporation having control of or access to moneys or securities of such

corporation in the regular discharge of their duties, shall, before entering upon the performance of their duties, execute their individual bonds with adequate surety payable to the corporation to indemnify the corporation for any pecuniary loss it shall sustain of money or other personal property by any act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or willful misapplication. The amount and form of such bonds and the sufficiency of the sureties thereon shall be approved by the board of directors of the corporation and by the department and shall be filed with the department within such time as it may prescribe. In lieu of individual bonds, a blanket bond covering all such officers and employees may be used, subject to the same approval as individual bonds. No officer or director of the corporation shall sign the bond of any other person as surety thereon required by this article. If any bonds required by this section are signed by individuals as sureties, the bonds must contain separate affidavits as to the net worth of each surety. [Acts 1935, ch. 162, § 92, p. 588; P.L.252-1985, § 30.]

NOTES TO DECISIONS

Automatic Termination Upon Takeover Provision.

Automatic termination upon takeover provision in a blanket fidelity bond purchased to satisfy statutory requirement of IC 27-1-7-14 was not void as violating Indiana public policy, either because it frustrated the policy of

protecting Indiana insurance policyholders, or because it violated the liquidator's mandate to marshal and distribute assets. *Mutual Sec. Life Ins. Co. ex rel. Bennett v. Fidelity & Deposit Co.*, 659 N.E.2d 1096 (Ind. App. 1995).

27-1-7-15. Loans to officers and directors — Penalties — Exceptions. — A board of directors, director, or officer of any insurance company doing business in this state who lends any of its money or other property, to any director or officer of the insurance company commits a Class B misdemeanor. A director or officer who borrows from the insurance company any money or other property commits a Class B misdemeanor. However, this section does not apply to:

- (1) The continuation to maturity of any loan that did not violate this section when it was made; or
- (2) A loan made by a life insurance company to any director or officer of the company in an amount not greater than the net cash surrender value of, and secured by, a policy with the company held by the borrower; or
- (3) A loan made by any insurance company to an officer, other than a director, secured by a first mortgage loan upon a single-family dwelling, condominium unit or cooperative apartment unit, which is the borrower's personal residence acquired on account of the officer's relocation or initial employment. [Acts 1935, ch. 162, § 93, p. 588; 1978, P.L. 2, § 2707; 1981, P.L. 235, § 1.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

27-1-7-16. Books and records. — Every corporation shall keep correct and complete books of account and minutes of the proceedings of its shareholders, members or policyholders, directors, executive and/or finance committees, and it shall likewise keep, at its principal office, an original or a duplicate stock transfer book and/or records giving the names and addresses of all shareholders, members or policyholders, and if a stock company the number of shares held by each. [Acts 1935, ch. 162, § 94, p. 588.]

NOTES TO DECISIONS

Inspection by Stockholder.

This section does not require that an insurance corporation's books be opened for inspection

by a stockholder. State ex rel. Great Fid. Life Ins. Co. v. Circuit Court, 259 Ind. 441, 33 Ind. Dec. 168, 288 N.E.2d 143 (1972).

27-1-7-17. Dividends. — No domestic company shall make any payments in form of dividends or otherwise to its shareholders, for or on account of any interest in or relation to the company as shareholders, unless it possesses assets in the amount of such payment, in excess of its liabilities, including its capital stock: Provided, That in no instance shall such dividend reduce the surplus below an amount equal to fifty per cent (50%) of the capital stock of such company; and no domestic company shall make any payments to its members or policyholders for or on account of any interest in or relation to the company as members or policyholders, except for matured claims or other policy obligations and in the purchase of surrender values, unless it possesses assets in the amount of such payments in excess of its liabilities. [Acts 1935, ch. 162, § 95, p. 588.]

27-1-7-18. [Repealed.]

Compiler's Notes. This section, concerning reinsurance of individual risks, was re-

pealed by P.L.260-1983, § 8. For present similar provisions, see IC 27-6-1.1.

27-1-7-19. Provision of surplus funds — Rate of interest. — (a) A mutual or stock company organized under this article may borrow or assume a liability for the repayment of a sum of money to provide itself with surplus funds with the prior approval of the department. The rate of interest on any loan or advance may not exceed the following:

(1) The corporate base rate in effect on the first business day of the month in which the loan document is executed, as reported by the bank or branch with the greatest amount of assets in Indiana, plus three percent (3%) per annum.

(2) A variable rate equal to:

(A) the corporate base rate in effect on the first business day of each month during the term of the loan, as reported by the bank or branch with the greatest amount of assets in Indiana; plus

(B) two percent (2%);

per annum. However, the variable rate may not increase by more than two percent (2%) in any one (1) year and may not increase by more than five percent (5%) over the life of the loan.

The company shall elect and state in the written agreement whether the interest rate is to be fixed or floating for the term of the agreement. The agreement shall be submitted to and approved by the department before the agreement's execution.

(b) The loan or advance, with interest at a rate not exceeding the maximum rate of interest as defined in subsection (a) shall be repaid only out of the surplus of the company. Repayment of principal or payment of interest may be made only when approved by the department whenever in its judgment the financial condition of the company shall warrant. However, the department may not withhold approval if:

(1) the company has and submits to the department satisfactory evidence that a surplus that is equal to or greater than the surplus existing immediately after the issuance of the loan or advance will exist after the repayment; and

(2) the surplus that will exist immediately after repayment of principal or payment of interest is:

(A) reasonable in relation to the company's outstanding liabilities; and

(B) adequate to the company's financial needs;

in light of the factors set forth in IC 27-1-23-4(f).

(c) A loan or advance made under this section, or interest accruing on the loan or advance, may not form a part of the legal liabilities of the company until authorized for payment by the department. However, until a loan or an advance is repaid, all statements published by the company or filed with the department must show the amount of the loan or advance then remaining unpaid, including any accrued and unpaid interest charges. [Acts 1935, ch. 162, § 97, p. 588; P.L.138-1984, § 1; P.L.253-1985, § 1; P.L.184-1996, § 1.]

27-1-7-20. Right to hold policies. — Any public or private corporation, board or association in this state or elsewhere may make applications, enter into agreements for, and hold policies in, any mutual insurance company. Any officer, stockholder, trustee or legal representative of any such company, board, association, or estate may be recognized as acting for or on its behalf for the purposes of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. [Acts 1935, ch. 162, § 97a, p. 588.]

27-1-7-21. Maximum and contingent premiums — Mutual companies. — (a) The maximum premium shall be expressed in the policy of a mutual company and shall be solely a cash premium without contingent premium but no such company other than a life insurance company shall issue any policy providing limits of liability for any one (1) risk under any one (1) line of insurance in an amount exceeding five percent (5%) of its surplus, including contingent reserves, if any, until and unless it either possesses a surplus, including contingent reserves, if any, of at least four hundred thousand dollars (\$400,000), or has reinsured in a reinsurer (or reinsurers) admitted to do business in this state and authorized to make such kind or kinds of reinsurance in this state all of such liability in excess

of such amount or such greater amount as the commissioner may authorize and such reinsurance contract or contracts shall have been submitted to and approved by the commissioner. Such reinsurance contract or contracts shall be in such form as to enable the insured under such policy or the holder of a judgment against the insured for which such company is liable under such policy to maintain an action on such reinsurance contract or contracts against such reinsured company jointly with the reinsurer and, upon recovering judgment, to have recovery against such reinsurer or reinsurers for payment to the extent to which it or they may be liable under such reinsurance contract (or contracts) and in discharge thereof. In no event shall the uninsured liability assumed under this section on any one (1) risk exceed the amount otherwise authorized by this article to be written upon any one (1) risk.

(b) Any determination of permissible limits of liability and amount of surplus pursuant to the provisions of subsection (a) shall be made as of December 31 immediately preceding except that in the case of a newly formed company such determination shall be made as of the date it receives the certificate of the department authorizing it to commence business.

(c) Any reinsurance contract submitted to and approved by the commissioner in accordance with the requirements of this section shall continue in full force and effect until notice of its termination or amendment has been filed with the commissioner, and in the case of an amendment has been approved by him.

(d) Subsection (a) shall apply only to companies organized under this article after July 26, 1967, except that any company in existence on July 26, 1967, under any of the insurance statutes of this state and to which subsection (a) would otherwise apply may, by appropriate action of its policyholders and board of directors, elect to comply with subsection (a).

(e) This section shall not affect nor invalidate any policy of any mutual insurance company in existence on July 26, 1967, issued pursuant to Acts 1935, c.162, s.98. Any such policy issued on or after July 26, 1967, by a mutual insurance company in existence on July 26, 1967, and the rights and obligations thereunder shall continue to be subject to the provisions of Acts 1935, c.162, s.98 until such company has exercised the right of election provided in this section and has complied with the provisions of this section. [Acts 1935, ch. 162, § 98, p. 588; 1967, ch. 233, § 1; P.L.252-1985, § 31.]

Cross References. Application to farmers' mutuals, IC 27-5-3.

Premium tax, IC 27-1-18-2.

Rates and rating organizations, premium not in accordance with act prohibited, IC 27-1-22-18.

Reinsurance by reciprocal exchange, IC 27-6-3-1.

Reinsurance generally, IC 27-1-9, IC 27-6-1.1.

27-1-7-22. Disbursements — Vouchers. — No domestic insurance corporation shall make any disbursement of one hundred dollars (\$100) or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm, limited liability company, or corporation receiving the money and correctly describing the consideration for the payment, and if the same be for services and disbursements, setting forth the services rendered and

an itemized statement of the disbursements made, and if it be in connection with any matter pending before any legislative or public body or before any department or officer of any government, correctly describing in addition the nature of the matter and of the interest of such corporation therein, or, if such a voucher can not be obtained by an affidavit stating the reasons therefor and setting forth the particulars above mentioned. [Acts 1935, ch. 162, § 99, p. 588; P.L.8-1993, § 411.]

Cross References. Other provisions concerning necessity for vouchers, IC 27-2-3-1.

27-1-7-23. False annual or other statements — Penalty. — A director, officer, agent, or employee of any company who knowingly subscribes, makes, or concurs in making or publishing any annual or other statement required by law, containing any material statement which is false, commits a Class A misdemeanor. [Acts 1935, ch. 162, § 100, p. 588; 1978, P.L. 2, § 2708.]

Cross References. Conviction of misdemeanor or felony, effect on license, IC 25-1-1.1-1.

Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

CHAPTER 7.5
INDEMNIFICATION OF DIRECTORS

SECTION.

- 27-1-7.5-1. "Corporation" defined.
- 27-1-7.5-2. "Director" defined.
- 27-1-7.5-3. "Expenses" defined.
- 27-1-7.5-4. "Liability" defined.
- 27-1-7.5-5. "Official capacity" defined.
- 27-1-7.5-6. "Party" defined.
- 27-1-7.5-7. "Proceeding" defined.
- 27-1-7.5-8. When indemnification permissible.
- 27-1-7.5-9. Indemnification of wholly successful director against reasonable expenses.

SECTION.

- 27-1-7.5-10. Reimbursement for reasonable expenses in advance of final disposition.
- 27-1-7.5-11. Application for indemnification.
- 27-1-7.5-12. Authorization of indemnification — Procedure.
- 27-1-7.5-13. Indemnification of officers, employees, and agents.
- 27-1-7.5-14. Insurance.
- 27-1-7.5-15. Other rights not excluded — Validity against limitations imposed by articles of incorporation, etc. — Reimbursement of witnesses.

27-1-7.5-1. "Corporation" defined. — As used in this chapter, "corporation" has the meaning set forth in IC 27-1-2-3. The term also includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction. [P.L.266-1987, § 6.]

27-1-7.5-2. "Director" defined. — As used in this chapter, "director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not.

A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. The term includes, unless the context requires otherwise, the estate or personal representative of a director. [P.L.266-1987, § 6.]

27-1-7.5-3. "Expenses" defined. — As used in this chapter, "expenses" includes counsel fees. [P.L.266-1987, § 6.]

27-1-7.5-4. "Liability" defined. — As used in this chapter, "liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding. [P.L.266-1987, § 6.]

27-1-7.5-5. "Official capacity" defined. — (a) As used in this chapter, "official capacity" means:

(1) When used with respect to a director, the office of director in a corporation; and

(2) When used with respect to an individual other than a director, as contemplated in section 13 [IC 27-1-7.5-13] of this chapter, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

(b) The term does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise, whether for profit or not. [P.L.266-1987, § 6; P.L.5-1988, § 141.]

27-1-7.5-6. "Party" defined. — As used in this chapter, "party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding. [P.L.266-1987, § 6.]

27-1-7.5-7. "Proceeding" defined. — As used in this chapter, "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. [P.L.266-1987, § 6.]

27-1-7.5-8. When indemnification permissible. — (a) A corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(1) The individual's conduct was in good faith;

(2) The individual reasonably believed:

(A) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interests; and

(B) In all other cases, that the individual's conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, the individual either:

- (A) Had reasonable cause to believe the individual's conduct was lawful; or
- (B) Had no reasonable cause to believe the individual's conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (a)(2).

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section. [P.L.266-1987, § 6.]

27-1-7.5-9. Indemnification of wholly successful director against reasonable expenses. — Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [P.L.266-1987, § 6.]

27-1-7.5-10. Reimbursement for reasonable expenses in advance of final disposition. — (a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

- (1) The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 8 [IC 27-1-7.5-8] of this chapter;
- (2) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and
- (3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this chapter.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 12 [IC 27-1-7.5-12] of this chapter. [P.L.266-1987, § 6.]

27-1-7.5-11. Application for indemnification. — Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction.

tion. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines that:

- (1) The director is entitled to mandatory indemnification under section 9 [IC 27-1-7.5-9] of this chapter, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court ordered indemnification; or
- (2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 8 [IC 27-1-7.5-8] of this chapter. [P.L.266-1987, § 6.]

27-1-7.5-12. Authorization of indemnification — Procedure. —

(a) A corporation may not indemnify a director under section 8 [IC 27-1-7.5-8] of this chapter unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 8 of this chapter.

(b) The determination shall be made by any one (1) of the following procedures:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

(2) If a quorum cannot be obtained under subdivision (1), by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding.

(3) By special legal counsel:

(A) Selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2); or

(B) If a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate).

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) to select counsel. [P.L.266-1987, § 6.]

27-1-7.5-13. Indemnification of officers, employees, and agents. —

The following apply unless a corporation's articles of incorporation provide otherwise:

- (1) An officer of the corporation, whether or not a director, is entitled to mandatory indemnification under section 9 [IC 27-1-7.5-9] of this chapter and is entitled to apply for court ordered indemnification under section 11 [IC 27-1-7.5-11] of this chapter, in each case to the same extent as a director.

(2) The corporation may indemnify and advance expenses under this chapter to an officer, employee, or agent of the corporation, whether or not a director, to the same extent as to a director.

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent, whether or not a director, to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract. [P.L.266-1987, § 6.]

27-1-7.5-14. Insurance. — A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under section 8 or 9 [IC 27-1-7.5-8 or IC 27-1-7.5-9] of this chapter. [P.L.266-1987, § 6.]

27-1-7.5-15. Other rights not excluded — Validity against limitations imposed by articles of incorporation, etc. — Reimbursement of witnesses. — (a) The indemnification and advance for expenses provided for or authorized by this chapter does not exclude any other rights to indemnification and advance for expenses that a person may have under:

- (1) A corporation's articles of incorporation or bylaws;
- (2) A resolution of the board of directors or of the shareholders of a stock company, or members or shareholders of a mutual company qualified to elect directors; or
- (3) Any other authorization, whenever adopted, after notice, by a majority vote of all the voting shares then issued and outstanding of a stock company or of all the members or policyholders of a mutual company authorized to elect directors.

(b) If the articles of incorporation, bylaws, resolutions of the board of directors or of the shareholders, or other duly adopted authorization of indemnification or advance for expenses limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles, bylaws, resolution of the board of directors or of the shareholders, members, or directors or other duly adopted authorization of indemnification or advance for expenses.

(c) This chapter does not limit a corporation's power to pay or reimburse expenses incurred by a director, officer, employee, or agent in connection with the person's appearance as a witness in a proceeding at a time when the person has not been made a named defendant or respondent to the proceeding. [P.L.266-1987, § 6.]

CHAPTER 8

INSURANCE LAW — AMENDMENT OF ARTICLES OF INCORPORATION

SECTION.

- 27-1-8-1. Right to amend.
 27-1-8-2. Proposal of amendment.
 27-1-8-3. Adoption of amendments — Name change.
 27-1-8-4. Articles of amendment.
 27-1-8-5. Preparation of articles of amendment.
 27-1-8-6. Approval of articles by department.
 27-1-8-7. Examination by attorney general.

SECTION.

- 27-1-8-8. Approval by secretary of state.
 27-1-8-9. Issuance of amended certificate of authority.
 27-1-8-10. Effect of amended certificate of authority.
 27-1-8-11. Requirements before exercising authority.
 27-1-8-12. Decrease of capital stock.
 27-1-8-13. [Repealed].

27-1-8-1. Right to amend. — Any corporation may, at any time, amend its articles of incorporation without limitation so long as the articles as amended would have been authorized by this article as original articles, by complying with the provisions of this chapter. [Acts 1935, ch. 162, § 101, p. 588; P.L.252-1985, § 32.]

27-1-8-2. Proposal of amendment. — Every amendment to the articles of incorporation shall first be proposed by the board of directors, by the adoption of a resolution setting forth the proposed amendment and directing that it be submitted to a vote of the shareholders, members, or policyholders entitled to vote in respect thereof at a designated meeting of such shareholders, members, or policyholders which may be an annual meeting of the shareholders, members, or policyholders or a special meeting of the shareholders, members, or policyholders entitled to vote in respect thereof. If the resolution shall direct that the proposed amendment is to be submitted at an annual meeting, notice of the submission of the proposed amendment shall be included in the notice of such annual meeting. If the said resolution shall direct that the proposed amendment is to be submitted to a special meeting of the shareholders, members, or policyholders entitled to vote thereon, such special meeting shall be called by the resolution proposing the amendment, and notice of such meeting shall be given at the time [and] in the manner provided in IC 27-1-7-7. [Acts 1935, ch. 162, § 102, p. 588; P.L.252-1985, § 33.]

Compiler's Notes. The bracketed word "and" was inserted in the last sentence for clarity by the compiler.

27-1-8-3. Adoption of amendments — Name change. — (a) Except as provided in subsection (b), an amendment to the articles of incorporation so proposed shall be submitted to a vote of the shareholders, members, or policyholders at the annual or at the special meeting directed by the resolution of the board of directors proposing the amendment, and the proposed amendment shall be adopted upon receiving the affirmative votes of at least a majority of the stock, or such greater portion as the articles of incorporation may require, of the outstanding shares of stock entitled to vote, if a stock company; and upon receiving the affirmative votes of at least

two-thirds ($\frac{2}{3}$) of the members or policyholders voting at such annual or special meeting, if other than a stock company.

(b) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles of incorporation without shareholder, member, or policyholder action to:

- (1) extend the duration of the corporation, if the corporation was incorporated at a time when limited duration was required by law;
- (2) delete the names and addresses of the initial directors, officers, or incorporators;
- (3) delete the name and address of the initial registered agent or registered or principal office, if a statement of change is on file with the secretary of state;
- (4) change each issued and unissued authorized share of an outstanding class into a greater number of whole shares or a lesser number of whole shares and fractional shares if the corporation has only shares of that class outstanding;
- (5) reduce the number of authorized shares solely as the result of a cancellation of treasury shares; or
- (6) change the corporate name, if the new name complies with IC 27-1-6-3.

(c) If a corporation changes its name under subsection (b)(6), the corporation shall, not more than thirty (30) days after the effective date of the amendment changing the corporate name, mail or deliver a written or printed notice of the new corporate name to each shareholder, member, or policyholder of record of the corporation. [Acts 1935, ch. 162, § 103, p. 588; P.L.185-1997, § 2.]

27-1-8-4. Articles of amendment. — Upon the proposal and adoption of any amendment to the articles of incorporation, there shall be executed articles of amendment setting forth the following:

- (a) The amendment so adopted;
 - (b) The manner of its adoption and the vote by which it was adopted;
 - (c) In the case of a stock corporation[:]
 - (1) If the total authorized amount or number of shares is increased by such amendment, a statement of the shares theretofore authorized and a statement of the additional shares authorized by the amendment;
 - (2) If the total authorized amount or number of shares is reduced by such amendment, a statement of the shares theretofore authorized and the amount thereof that has been issued, and a statement of the reduction authorized by the amendment and the manner in which the reduction shall be effected; and
 - (3) If any change is made in the shares without increasing or reducing the total authorized amount or number of shares, a statement of the shares theretofore authorized and the amount thereof that has been issued, and a statement of the change to be made by the amendment and the manner in which the change shall be effected.
- [Acts 1935, ch. 162, § 105, p. 588.]

Compiler's Notes. The bracketed colon at the end of the introductory language of sub-section (c) was substituted for a semicolon by the compiler.

27-1-8-5. Preparation of articles of amendment. — The form of the articles of amendment shall be prescribed and furnished by the department. The articles of amendment shall be prepared and signed in triplicate originals by the president or a vice-president and by the secretary or an assistant secretary of the corporation, and shall be acknowledged before a notary public by the officers signing the articles and shall be presented in triplicate originals to the department at its office, for the approval or disapproval of the department. [Acts 1935, ch. 162, § 105, p. 588.]

27-1-8-6. Approval of articles by department. — The department is hereby authorized to approve or disapprove such articles of amendment, and the approval of them, if given, shall be evidenced in the manner prescribed in IC 27-1-6-8. [Acts 1935, ch. 162, § 106, p. 588; P.L.252-1985, § 34.]

27-1-8-7. Examination by attorney general. — In the event the department approves the articles of amendment, they shall then be submitted to the attorney general for the state of Indiana who shall examine said articles. And his approval, if given, shall be evidenced in the manner provided in IC 27-1-6-9, and he shall return the same to the department. [Acts 1935, ch. 162, § 107, p. 588; P.L.252-1985, § 35.]

27-1-8-8. Approval by secretary of state. — When the articles of amendment have been approved by the attorney-general and returned to the department, then the department shall present the same to the secretary of state for the state of Indiana. If the secretary of state finds that the articles conform to law, he shall indorse his approval upon each of the triplicate copies of the articles, and when all fees have been paid as required by law, he shall file one (1) copy in his office and shall return the other two (2) copies of the articles of amendment bearing the indorsement of his approval, to the corporation, one (1) of which copies the corporation shall file with the department. [Acts 1935, ch. 162, § 108, p. 588.]

Cross References. Fees and charges payable to the insurance department, IC 27-1-3-15.

Fees payable by all domestic corporations to the secretary of state, IC 23-1-18-3.

Fees payable to secretary of state by insurance companies organized under the laws of this state, IC 27-1-20-13.

27-1-8-9. Issuance of amended certificate of authority. — When the provisions of sections 2 through 8 [IC 27-1-8-2 through IC 27-1-8-8] of this chapter have been complied with, then the commissioner may issue an amended certificate of authority, which shall license the company to transact the kind or kinds of insurance specified in its articles of incorporation and in the amendment to its articles of incorporation, and which shall expire at midnight, April 30, next following the date of issuance. [Acts 1935, ch. 162, § 109, p. 588; P.L.252-1985, § 36.]

27-1-8-10. Effect of amended certificate of authority. — Upon the issuance of the amended certificate of authority by the commissioner, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. No amendment shall effect any existing cause of action in favor of or against such corporation, or any pending suit in which such corporation shall be a party, or the existing rights of persons other than shareholders of a stock company, or the members or policyholders in companies other than stock companies; and in the event the corporate name shall be changed by any amendment, no suit brought against such corporation under its former name shall be abated for that reason. [Acts 1935, ch. 162, § 110, p. 588.]

27-1-8-11. Requirements before exercising authority. — (a) A corporation whose articles of incorporation have been amended in accordance with the provisions of this chapter shall not exercise any power, right, or authority conferred by, or take any action pursuant to, such amendment until:

(1) The corporation shall have filed one (1) of the triplicate copies of the articles of amendment, bearing the endorsement of the approval of the secretary of state as provided in section 8 [IC 27-1-8-8] of this chapter, for record in the office of the county recorder of the county in which the articles of incorporation of such corporation were or should have been filed for record as provided in IC 27-1-6-13; and

(2) The company shall have filed a certified copy of such amended certificate of authority for record with the county recorder of the county wherein the principal office is located, which certified copy shall be evidence only that the company is authorized and licensed to transact the kind or kinds of insurance set out therein, for the period stated therein.

(b) If a corporation exercises any such power, right, or authority, or takes any such action, in violation of this section, the officers and directors who participated therein shall be severally liable for any debts or liabilities of the corporation incurred thereby or arising therefrom. [Acts 1935, ch. 162, § 111, p. 588; P.L.252-1985, § 37.]

Cross References. Certificate of authority prerequisite to transacting business, IC 27-1-3-20.

27-1-8-12. Decrease of capital stock. — A company may amend its articles by providing for a decrease of its capital stock to an amount not less than the minimum capital required for the kind or kinds of insurance theretofore transacted by the company. The department shall not approve or issue its certified copy of such amendment to the company if it shall be of the opinion that the interests of policyholders or creditors may be prejudiced thereby. No distribution of the assets of the company shall be made to shareholders upon any such decrease of capital which shall reduce the surplus of its assets over its liabilities, including capital, to less than the minimum surplus required by this article. Upon any such amendment so

approving the agreement shall direct that the agreement be submitted to a vote of the shareholders, members, or policyholders of such corporation entitled to vote in respect thereof at a designated meeting thereof, which may be an annual meeting of shareholders, members, or policyholders, or a special meeting of the shareholders, members, or policyholders entitled to vote in respect thereof. If the designated meeting of any corporation at which the agreement is to be submitted is an annual meeting, notice of the submission of the agreement shall be included in the notice of such annual meeting. If the designated meeting of any corporation at which the agreement is to be submitted is a special meeting of the shareholders, members, or policyholders entitled to vote in respect thereof, such special meeting shall be called by the resolution designating the meeting, and notice of such meeting shall be given at the time and in the manner provided in IC 27-1-7-7.

(b) Unless shareholder, member, or policyholder approval is not required by subsection (i), the agreement of merger so approved shall be submitted to a vote of the shareholders, members, or policyholders of each corporation entitled to vote in respect thereof at the meeting directed by the resolution of the board of directors of such corporation approving the agreement, and the agreement shall be adopted by such corporation upon receiving the affirmative vote of such proportion of the shareholders, members, or policyholders as provided in section 8 [IC 27-1-9-8] of this chapter.

(c) Unless shareholder, member, or policyholder approval is not required by subsection (i), within five (5) days after the agreement of merger shall be adopted by any corporation, the secretary of such corporation shall mail or deliver a written or printed notice of the adoption of the agreement to each shareholder, member, or policyholder of record of such corporation who was not present in person or represented by proxy at the meeting at which the agreement was adopted. And the corporation shall file an affidavit with the department, signed by the president and secretary of such corporation, that such notice was given.

(d) Unless shareholder, member, or policyholder approval is not required by subsection (i), any shareholder, member, or policyholder of any such corporation who did not vote in favor of the adoption of the agreement of merger may object to such merger in the manner and with the effect provided in sections 9 and 10 [IC 27-1-9-9 and IC 27-1-9-10] of this chapter.

(e) Unless shareholder, member, or policyholder approval is not required by subsection (i), as soon as practicable after the expiration of a period of thirty (30) days after the adoption of the agreement of merger by the shareholders, members, or policyholders of that one (1) of the merging corporations which is the last, in point of time, to adopt the same, the agreement shall again be considered by the board of directors of each corporation a party thereto, at a regular or special meeting of such board, and if the board of directors of each such corporation, by a majority vote of the members of such board, shall again approve the agreement and shall authorize the execution thereof, the agreement shall be signed on behalf of each such corporation by its president or a vice president and its secretary or an assistant secretary and shall have the corporate seal of each such corporation thereto affixed.

(f) Upon the execution of the agreement of merger by all of the corporations parties thereto, there shall be executed and filed, in the manner provided in this section, articles of merger setting forth the agreement of merger, the signatures of the several corporations parties thereto, the manner of its adoption, and the vote, if any, by which adopted by each of such corporations. The articles of merger shall be signed on behalf of each such corporation by its president or a vice president and its secretary or an assistant secretary, and acknowledged before a notary public by the officers signing the same, in such multiple copies as shall be required to enable the corporations to comply with the provisions of this chapter with respect to filing and recording the articles of merger, and shall then be presented to the department at its office. The department is hereby authorized to approve or disapprove the articles of merger. In the event that the department shall approve the articles of merger, it shall endorse its approval thereon in the manner provided in IC 27-1-6-8, and it shall present the same to the secretary of state of the state of Indiana at his office.

(g) Upon the presentation of the articles of merger, the secretary of state, if he finds that they conform to law, shall endorse his approval on each of the multiple copies of the articles and, when all fees have been paid as required by law, shall file one (1) copy of the articles of merger in his office and issue a certificate of merger and shall return the remaining copies of the articles bearing the endorsement of his approval, together with the certificate of merger, to the surviving corporation or its representatives.

(h) The surviving corporation shall obtain a certified copy of the certificate of merger from the secretary of state and file the same with the department, accompanied by a copy of the articles of merger bearing the endorsement and approval of the secretary of state.

(i) If a domestic corporation is the surviving corporation, action by the shareholders, members, or policyholders is not required if the articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in IC 27-1-8-3(b)) from its articles before the merger and:

(1) if the corporation is a stock corporation:

(A) each shareholder of the surviving corporation whose shares were outstanding immediately before the merger will hold the same proportionate number of shares relative to the number of shares held by all shareholders (except for shares of the surviving corporation received solely as a result of the shareholder's proportionate shareholdings in the other corporations participating in the merger) with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(B) the number of voting shares outstanding immediately after the merger, including the number of voting shares issuable as a result of the merger (either by the conversion of securities issued under the merger or the exercise of rights and warrants issued under the merger), will not exceed by more than twenty percent (20%) the total number of voting shares (adjusted to reflect any forward or reverse share split that occurs under the plan of merger) of the surviving corporation outstanding immediately before the merger; and

(C) the number of participating shares outstanding immediately after the merger, including the number of participating shares issuable as a result of the merger (either by conversion of securities issued under the merger or the exercise of rights and warrants issued under the merger), will not exceed by more than twenty percent (20%) the total number of participating shares (adjusted to reflect any forward or reverse share split that occurs under a plan of merger) outstanding immediately before the merger; or

(2) if the surviving corporation is an insurance company other than a stock corporation:

(A) each member or policyholder of the surviving corporation will retain the same contractual and other rights to which the member or policyholder was entitled before the merger; and

(B) the number of votes of voting members immediately after the merger, including the number of votes of voting members added as a result of the merger, will not exceed by more than twenty percent (20%) the total number of votes of voting members of the surviving corporation immediately before the merger. [Acts 1935, ch. 162, § 116, p. 588; 1973, P.L. 272, § 1; P.L.252-1985, § 41; P.L.185-1997, § 5.]

Cross References. Fees and charges payable to the insurance department, IC 27-1-3-15.

Fees payable by all domestic corporations to the secretary of state, IC 23-1-18-3.

Fees payable to secretary of state by insurance companies organized under the laws of this state, IC 27-1-20-13.

27-1-9-4. Procedure for consolidation. — Any domestic corporation with any other corporation or corporations, subject to the provisions of sections 1 and 2 [IC 27-1-9-1 and IC 27-1-9-2] of this chapter, in the following manner:

(a) *Agreement of Consolidation.* The board of directors of each corporation shall, by a resolution adopted by a majority vote of the members of such board, approve a joint agreement of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they proposed to consolidate, which is hereinafter designated as the new corporation;

(2) The terms and conditions of the proposed consolidation and the mode of carrying the same into effect;

(3) The manner and basis, if any, of converting the shares of each stock corporation into shares of other securities or obligations of the new corporation, or, in whole or in part, into cash, property, shares, or other securities or obligations of any other corporation;

(4) With respect to the new corporation, all of the statements required by IC 1971, 27-1-6-4 to be set forth in original articles of incorporation for corporations formed under this article; and

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable;

(b) *Adoption of Agreement.* The agreement of consolidation shall then be submitted to a vote of the shareholders, members or policyholders

entitled to vote in respect thereof of each corporation in the same manner as provided in section 3 [IC 27-1-9-3] of this chapter and this agreement shall be adopted by such corporation upon receiving the affirmative vote of such proportion of the shareholders, members or policyholders, as provided in section 8 [IC 27-1-9-8] of this chapter; and the adoption thereof by directors and by the shareholders, members or policyholders shall be followed by the same notice to shareholders, members or policyholders as hereinabove provided in paragraphs (a), (b) and (c) of section 3 of this chapter in case of a merger.

(c) *Objections.* Any shareholder, member or policyholder, of any such corporation who did not vote in favor of the adoption of the agreement of consolidation, may object to such consolidation in the manner and with the effect provided in sections 9 and 10 [IC 27-1-9-9 and IC 27-1-9-10] of this chapter.

(d) *Reapproval and Execution of Agreement.* Upon the adoption of the agreement of consolidation it shall again be considered by the board of directors of each corporation a party to the agreement, and, if again approved and the execution of the agreement authorized by such board, the agreement shall be signed and filed, all in the same manner and within the same time as provided in subsection (e) of section 3 of this chapter.

(e) *Articles of Consolidation.* Under the execution of the agreement of consolidation by all of the corporations parties thereto, articles of consolidation shall be executed and filed, accompanied by the fees prescribed by law in the same manner and form and in such multiple copies as provided in subsection (f) of section 3 of this chapter.

(f) *Certificate of Consolidation and Incorporation.* Upon the presentation of the articles of consolidation, the secretary of state, if he finds that they conform to law, shall indorse his approval on each of the multiple copies of the articles, and, when all fees have been paid as required by law, shall file one (1) copy of the articles of consolidation in his office and issue a certificate of consolidation and incorporation, and shall return the remaining copies of the articles bearing the indorsement of his approval, together with the certificate of consolidation and incorporation, to the new corporation, or its representatives.

(g) *Filing Certificate.* The surviving corporation shall obtain a certified copy of the certificate of consolidation and incorporation from the secretary of state and file the same with the department, accompanied by a copy of the articles of consolidation bearing the indorsement of the approval of the secretary of state. [Acts 1935, ch. 162, § 117, p. 588; 1973, P. L. 272, § 2.]

27-1-9-5. Effective date of merger or consolidation. — Upon the issuance of a certificate of merger or a certificate of consolidation and incorporation by the secretary of state, the merger or consolidation, as the case may be, shall be effected, subject to the rights of dissenting shareholders, members, or policyholders, as provided in sections 9 and 10 [IC 27-1-9-9 and IC 27-1-9-10] of this chapter. [Acts 1935, ch. 162, § 118, p. 588; P.L.252-1985, § 42.]

27-1-9-6. Requirements before conducting business. — The surviving or new corporation, as the case may be, resulting from a merger or consolidation, shall within ten (10) days after such merger or consolidation has become effective as hereinabove provided, file for record with the county recorder of each county in which the principal office of any of the corporations parties to the agreement is located, and of each county in this state in which any of such corporations shall have real property at the time of such merger or consolidation the title to which will be transferred by the merger or consolidation, a certified copy of the certificate of merger or certificate of consolidation and incorporation, as the case may be, accompanied by one (1) of the copies of the articles of merger or articles of consolidation, bearing the indorsement of the approval of the secretary of state, as the case may be. [Acts 1935, ch. 162, § 119, p. 588.]

27-1-9-7. [Repealed.]

Compiler's Notes. This section, concerning reinsurance, was repealed by P.L.260-1983, § 8. For present similar provisions, see IC 27-6-1.1.

27-1-9-8. Voting. — At any meeting of the shareholders, members, or policyholders held pursuant to the resolution of the board of directors for the purpose of adopting an agreement of merger or consolidation, as provided for in sections 3 and 4 [IC 27-1-9-3 and IC 27-1-9-4] of this chapter, the shareholders, members, or policyholders entitled to vote in respect thereof may vote in person or by proxy. Each shareholder entitled to vote at such meeting shall have one (1) vote for each share of voting stock held by him, and each member or policyholder entitled to vote at such meeting shall have one (1) vote regardless of the amount of insurance or number of policies held by him. The affirmative votes representing two-thirds ($\frac{2}{3}$) of all outstanding capital stock in case of purely stock companies, or two-thirds ($\frac{2}{3}$) of all outstanding capital stock, if any, and two-thirds ($\frac{2}{3}$) of the votes cast by the members or policyholders represented at the meeting in person or by proxy in the case of other companies, shall be necessary for the adoption of such proposed articles of merger or consolidation. [Acts 1935, ch. 162, § 122, p. 588; 1941, ch. 115, § 4, p. 315; P.L.252-1985, § 43.]

Cross References. Shareholders, voting rights, IC 27-1-7-8.

27-1-9-9. Rights of dissenting shareholders. — (a) If any shareholder of any corporation a party to a merger or consolidation who did not vote in favor of such merger or consolidation at the meeting at which the agreement of merger or consolidation was adopted by the shareholders of such corporation shall, at any time within thirty (30) days after the filing of the affidavit of notice of the adoption of the agreement of merger or consolidation as provided for in sections 3 and 4 [IC 27-1-9-3 and IC 27-1-9-4] of this chapter, object thereto in writing and demand payment of the value of his shares, the surviving or new corporation shall, in the event that the merger or consolidation shall be made effective, pay to such shareholder upon

surrender of his certificates therefor, the value of such shares at the effective date of the merger or consolidation. If within thirty (30) days after such effective date, the value of such shares is agreed upon between the shareholder and the surviving or new corporation, as the case may be, payment therefor may be made within ninety (90) days after the effective date. If, within thirty (30) days after such effective date, the surviving or new corporation, as the case may be, and the shareholder do not so agree, either such corporation or the shareholder may, within ninety (90) days after such effective date, petition the judge of the circuit or superior court of the county in which the principal office of the corporation is located, to appraise the value of such shares, and payment of the appraised value thereof shall be made within sixty (60) days after the entry of the judgment or order finding such appraised value. The practice, procedure, and judgment in the circuit or superior court upon such petition shall be the same, so far as practicable, as that under the eminent domain laws in this state, and the judgment of such circuit or superior court in such matter shall be final.

(b) Upon the effective date of the merger or consolidation, any shareholder who has made such objection and demand shall cease to be a shareholder and shall have no rights with respect to such shares except the right to receive payment therefor. Every shareholder who did not vote in favor of such merger or consolidation and who does not object in writing and demand payment of the value of his shares at the time and in the manner provided in this section shall be conclusively presumed to have assented to such merger or consolidation. [Acts 1935, ch. 162, § 123, p. 588; 1941, ch. 115, § 5, p. 315; P.L.252-1985, § 44.]

27-1-9-10. Rights of dissenting members or policyholders. — If not less than five percent (5%) of the members or policyholders in a mutual corporation who did not vote in favor of such merger or consolidation at the meeting at which the agreement of merger or consolidation was adopted by the members or policyholder [policyholders] of such corporation shall, at any time within thirty (30) days after the filing of the affidavit of notice of the adoption of the agreement of merger or consolidation as provided for in sections 3 and 4 [IC 27-1-9-3 and IC 27-1-9-4] of this chapter, file a petition with the department for a hearing upon the adoption of such agreement or merger or consolidation, the department shall order a hearing upon said petition and give notice fixing the time and place of such hearing to the corporations which are parties to the merger or consolidation fifteen (15) days before the date of such hearing. The company whose policyholders file such petition shall give notice by mail to each member or policyholder of such company, at least ten (10) days before such hearing. At the time and place fixed in such notice, or at the time or times and place or places to which such hearing shall be adjourned, the commissioner shall proceed with the hearing and make or order such examination into the affairs and condition of each of such corporations as he may deem proper. The commissioner shall have the power to summon and compel the attendance and testimony of witnesses and the production of books and papers before him at such hearing. Any member or policyholder, as the case may be, of the corporation

so petitioning may appear before the commissioner and be heard with reference to said contract. If, upon such hearing being had, the commissioner is not satisfied that the interests of the members or policyholders, as the case may be, of such company are properly protected, or if he finds that any reasonable objection exists to such contract, he shall revoke the approval already given, and the said agreement of merger or consolidation shall thereupon become null and void. The commissioner shall have like power to revoke any approval of any such agreement of merger or consolidation if any officer, director, or employee of either corporation party to such agreement of merger or consolidation shall, after reasonable notice, fail or refuse to attend and testify at such hearing, or to produce any books or papers called for by said commissioner. [Acts 1935, ch. 162, § 124, p. 588; 1941, ch. 115, § 6, p. 315; P.L.252-1985, § 45.]

Compiler's Notes. The bracketed word "policyholders" was inserted in the first sentence by the compiler, as that appears to be the word intended.

27-1-9-11. Effect of merger or consolidation. — When such merger or consolidation has been effected as provided in this chapter, the following apply:

(a) The several corporations parties to the agreement of merger or consolidation shall be a single corporation, which shall be:

(1) In case of a merger, the surviving corporation a party to the agreement of merger into which it has been agreed the other corporations parties to the agreement shall be merged, which surviving corporation shall survive the merger; or

(2) In case of a consolidation, the new corporation into which it has been agreed the corporations parties to the agreement of consolidation shall be consolidated.

(b) The separate existence of all of the corporations parties to the agreement of merger or consolidation, except the surviving corporation in the case of a merger, shall cease.

(c) Such single corporation shall have all of the rights, privileges, immunities, and powers and shall be subject to all of the duties and liabilities of a corporation organized under this article.

(d) Such single corporation shall thereupon and thereafter possess all the rights, privileges, immunities, powers, and franchises of a public as well as of a private nature of each of the corporations so merged or consolidated, and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares of capital stock, and all other choses in action and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed, and the title to any real estate, or any interest therein, under the laws of this state vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such single corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so

merged or consolidated in the same manner and to the same extent as if such single corporation had itself incurred the same or contracted therefor; any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such single corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any of such corporations shall be impaired by such merger or consolidation, but such liens shall be limited to the property upon which they were liens immediately prior to the time of such merger or consolidation, unless otherwise provided in the agreement of merger or consolidation.

(f) In case of a merger, the articles of incorporation of the surviving corporation shall be supplanted and superseded to the extent, if any, that any provision or provisions of such articles shall be restated in the agreement of merger as provided by section 3 [IC 27-1-9-3] of this chapter, and such articles of incorporation shall be deemed to be thereby and to that extent amended; and in case of a consolidation, the statements set forth in the agreement of consolidation as provided in section 4 [IC 27-1-9-4] of this chapter shall be deemed to be articles of incorporation of the new corporation formed by such consolidation. [Acts 1935, ch. 162, § 125, p. 588; P.L.252-1985, § 46.]

Opinions of Attorney General. When affiliates are merged into a surviving company, the insurance department may transfer the duly certified and licensed agents of the affiliated companies to the surviving company

without necessitating new applications or relicensing of such agents. Upon expiration of such licenses, the same will have to be renewed and recertified. 1948, No. 51, p. 286.

27-1-9-12. Merger or consolidation between domestic and foreign corporations — Requirements. — (a) In case of a merger or consolidation between a domestic and a foreign company, the articles of merger or consolidation shall be regarded as executed by the proper officers of said foreign company when such officers are duly authorized to execute same through such action on the part of the directors, shareholders, members, or policyholders of said foreign company as may be required by the laws of the state where the same is incorporated; and upon execution, said articles of merger or consolidation shall be submitted to the commissioner of insurance or other officer at the head of the insurance department of the state where such foreign company is incorporated. No such merger or consolidation shall take effect until it shall have been approved by the insurance official of the state where said foreign company is incorporated nor until a certificate of his approval has been filed in the office of the department of insurance of the state of Indiana. Such submission to and approval by the proper official of such other state shall not be required unless the same are required by the laws of such foreign state. The domestic company involved in such merger or consolidation shall not through anything contained in this section be relieved of any of the procedural requirements enumerated in the preceding sections of this article.

(b) No merger or consolidation between a domestic and a foreign company shall take effect, unless and until the surviving or new company, if such is

a foreign company, shall file with the department a power of attorney appointing the commissioner and his successors in office, the attorney for service of said foreign company, upon whom all lawful process against said company may be served. Said power of attorney shall be irrevocable so long as said foreign company has outstanding in this state any contract of insurance, or other obligation whatsoever, and shall by its terms so provide. Service upon the commissioner shall be deemed sufficient service upon the company. [Acts 1935, ch. 162, § 127, p. 588; 1941, ch. 115, § 8, p. 315; P.L.260-1983, § 3.]

27-1-9-13. Transfer of deposits. — If the state in which a foreign, new, surviving or accepting company, is incorporated or organized, shall require the maintenance with any official of such state of a deposit of the legal reserve on the policies so assumed and such foreign company shall maintain such deposit, then the commissioner is authorized to deliver to the proper custodian of such funds in the state in which the said foreign company is incorporated or organized, such deposits as he may hold pertaining to the policies so assumed by the new, surviving or accepting company. If a surviving, new or accepting domestic company assumes all or a substantial number of the risks of a foreign company incorporated in a state which requires the maintenance with a state official of a deposit of the legal reserve on policies so assumed, then the commissioner is hereby authorized to receive from such official such deposits as he may hold pertaining to the policies so assumed. Such surviving, new or accepting company shall, within sixty (60) days after the transfer of such deposit, notify the holder of every policy secured by such transferred deposit that the transfer has been made; and the president and secretary of such company shall, within thirty (30) days thereafter, file with the commissioner an affidavit of the fact that due notification to policyholders, as provided for herein, has been given. The amount of deposit to be maintained from time to time for each policy on which liability is assumed shall be at least equal to the amount which would be required in the state where such deposit has theretofore been maintained. [Acts 1935, ch. 162, § 128, p. 588.]

Opinions of Attorney General. The transfer of reserves deposited by an Indiana company to the Texas insurance commissioner pursuant to a reinsurance contract was lawful and proper. 1939, p. 343.

27-1-9-14. Certificates of fees and commissions paid. — Whenever articles of merger, consolidation or reinsurance are filed with the department, there shall also be filed a certificate, executed by the president or a vice-president and attested by the secretary or an assistant secretary, and under the corporate seal of each of the corporations parties to the agreement of merger, consolidation and reinsurance, verified by the affidavits of all such officers, setting forth all fees, commissions or other compensations, or valuable considerations paid or to be paid, directly or indirectly, to any person or persons, firm or firms, limited liability company or limited liability companies, corporation or corporations whomsoever, which in any manner

secured, aided, promoted or assisted in any such merger, consolidation or reinsurance. [Acts 1935, ch. 162, § 129, p. 588; P.L.8-1993, § 412.]

27-1-9-15. Acceptance of money or property for assistance in merger prohibited — Penalty. — (a) No director, officer, or member of any such corporation or corporations, except as fully expressed in the affidavits described in section 14 [IC 27-1-9-14] of this chapter, may receive any money or other property for aiding, promoting, or assisting in such a merger, consolidation, or reinsurance.

(b) A person who violates this section commits a Class A misdemeanor. [Acts 1935, ch. 162, § 130, p. 588; 1978, P.L. 2, § 2709.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

CHAPTER 10

INSURANCE LAW — VOLUNTARY DISSOLUTION

SECTION.

- 27-1-10-1. By act of incorporators before beginning business.
- 27-1-10-2. By act of the corporation.
- 27-1-10-3. Life or health and accident companies having noncancellable policies in force.

SECTION.

- 27-1-10-4. Procedure for dissolution.
- 27-1-10-5. Articles of dissolution.
- 27-1-10-6. Certificate of dissolution.
- 27-1-10-7. Filing and recording of articles of dissolution.
- 27-1-10-8. Effect of certificate of dissolution.

27-1-10-1. By act of incorporators before beginning business. — With the approval in writing of the department, the incorporators named in the articles of incorporation of any corporation organized under the provisions of this article may surrender the certificate of incorporation and all of the corporate rights and franchises of the corporation at any time within one (1) year from the date of the issuance of the certificate and before the issuance of any of the shares of capital stock of the corporation and before the beginning by it of the business for which it was formed, by presenting to the secretary of state at his office, accompanied by the fees prescribed by law, a certificate in triplicate, signed and verified by the joint and several oaths of a majority of the incorporators in the form prescribed by the secretary of state, showing that no shares of the capital stock of the corporation have been issued and that the amount, if any, actually paid in on the shares, less any part thereof disbursed for necessary expenses, had been returned to those entitled thereto, that such business has not been begun, that no debts remain unpaid, and that they surrender all rights and franchises. [Acts 1935, ch. 162, § 131, p. 588; P.L.252-1985, § 47.]

Cross References. Election of farmers' mutual insurance companies, IC 27-5-4-2.

27-1-10-2. By act of the corporation. — Any corporation organized under the provisions of this article may liquidate its affairs and dissolve in the following manner:

(1) Whenever the board of directors by a resolution adopted by a majority vote of the members of such board shall deem it advisable to submit the question of dissolution, or whenever the board of directors shall be required in writing by the holders of a majority of the outstanding shares of capital stock, if a stock company, or a majority of the members or policyholders, if other than a stock company, to submit the question of dissolution, the board of directors shall submit the question of dissolving the company to a vote of the shareholders, members, or policyholders of a company entitled to vote in respect thereof at such meeting thereof as may be designated in such request, or, in the absence of such request or of such designation, in such resolution, the designated meeting may be an annual meeting of shareholders, members or policyholders, entitled to vote in respect thereof. If the designated meeting is an annual meeting, notice of the submission of the question of dissolution shall be included in the notice of such annual meeting. If the designated meeting is a special meeting of the shareholders, members, or policyholders entitled to vote in respect thereof, such special meeting shall be called by the board of directors, and notice of such meeting shall be given at the time and in the manner as provided in IC 27-1-7-7.

(2) The question of dissolving the corporation shall be submitted to a vote of the shareholders, members, or policyholders entitled to vote in respect thereof at the meeting designated as provided in this section, and the dissolution shall be authorized upon receiving the affirmative votes of the holders of two-thirds ($\frac{2}{3}$) of the outstanding shares entitled to vote in respect thereof, if a stock company, or not less than two-thirds ($\frac{2}{3}$) of the members or policyholders entitled to vote, if other than a stock company. The shareholders, members, or policyholders of a corporation entitled to vote in respect to dissolution of the corporation shall be the shareholders entitled to vote under IC 27-1-7-8 and the members or policyholders entitled to vote under IC 27-1-7-9. [Acts 1935, ch. 162, § 132, p. 588; P.L.252-1985, § 48.]

27-1-10-3. Life or health and accident companies having noncancellable policies in force. — Nothing contained in this article shall authorize or be construed to authorize the dissolution of any life insurance company or health and accident insurance company having noncancellable policies in force, after the same shall have commenced business, unless and until all of its policies shall have been reinsured, to the satisfaction of the commissioner, in a solvent life insurance company or health and accident insurance company respectively. [Acts 1935, ch. 162, § 133, p. 588; P.L.252-1985, § 49.]

27-1-10-4. Procedure for dissolution. — Upon authorization of the dissolution, the board of directors shall then proceed to:

(a) Cause a notice that the corporation is about to be dissolved to be published at least once in a newspaper of general circulation, printed and published in the English language, in the county in which the

principal office of the corporation is located, and at least once in a newspaper of general circulation, printed and published in the English language in the city of Indianapolis, Marion County, Indiana, and to be mailed to each creditor of the corporation;

(b) Collect all of the corporate assets;

(c) Pay and discharge all of the corporate debts and liabilities; and

(d) After the expiration of a period of thirty (30) days following the publication and mailing of said notice, distribute the remaining corporate assets and property among the shareholders, members or policyholders according to their respective interests.

In case the holders of shares or policies are unknown or shall fail or refuse to accept their distributive shares in such property and assets, or are under any disability, or can not be found, after diligent inquiry or in case the ownership of any shares or policies is in dispute, the board of directors shall deposit the distributive portions of such shares of stock or policies with the clerk of the circuit court in the county in which the principal office is located for the use and benefit of those who may be lawfully entitled thereto, and such deposit shall have the same force and effect as if payment had been made directly to and accepted by the persons lawfully entitled thereto. Such distributive shares shall be paid over by such clerk to such shareholders or policyholders, respectively, or to the lawful owner of the shares or policies, the ownership of which has been in dispute, or to their respective legal representatives, upon satisfactory proof being made to such clerk of their respective rights thereto. [Acts 1935, ch. 162, § 134, p. 588.]

27-1-10-5. Articles of dissolution. — The corporation shall then execute and file, in the manner provided in this chapter, articles of dissolution, setting forth the following:

(a) The name of the corporation.

(b) The place where its principal office is located.

(c) The date of the meeting of the shareholders, members, or policyholders at which the dissolution was authorized and a copy of the notice of such meeting.

(d) A copy of the resolution of the shareholders, members, or policyholders authorizing the dissolution.

(e) The manner of its adoption and the vote by which it was adopted.

(f) A copy of the notice published and mailed as provided in this chapter.

(g) The names and addresses of the then existing directors and officers of the corporation.

(h) A complete itemized list of all the corporate debts and liabilities of the corporation existing at the time of the adoption of such resolution and thereafter incurred, and the date and manner of payment of each such debt and liability.

(i) A complete itemized list of all the corporate assets and property distributed to its shareholders, members, or policyholders, the name of each such shareholder, member, or policyholder, the amount distributed to each, and the date of distribution.

The articles of dissolution shall be executed in triplicate originals, in the form prescribed by the department, and signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified by the oaths of the officers signing the same, and shall be presented in triplicate originals to the department at its office accompanied by the proof of publication of the notice required by section 4 [IC 27-1-10-4] of this chapter. The department is hereby authorized, in its discretion, to approve or disapprove the articles of dissolution and proof of publication. If the department shall approve the articles of dissolution and proof of publication, it shall endorse its approval thereon as required in IC 27-1-6-8 and present the same to the attorney general of the state of Indiana for examination. In the event the attorney general approves the articles of dissolution and proof of publication he shall certify his approval thereon as required in IC 27-1-6-9 and return the same to the department when the articles of dissolution and proof of publication have been approved by the attorney general and returned to the department. [Acts 1935, ch. 162, § 135, p. 588; P.L.252-1985, § 50.]

27-1-10-6. Certificate of dissolution. — Then the department shall present the same to the secretary of state for the state of Indiana. If the secretary of state finds that the articles of dissolution and proof of publication conform to law he shall indorse his approval upon each of the triplicate copies of the articles, and the proof of publication, and when all fees have been paid as required by law, he shall file one (1) copy of the articles of dissolution and the proof of publication in his office and issue a certificate of dissolution to the corporation, and shall return the certificate of dissolution to the corporation together with the two (2) remaining copies of the articles of dissolution, bearing the indorsement of his approval, to the corporation or its representatives. [Acts 1935, ch. 162, § 136, p. 588.]

27-1-10-7. Filing and recording of articles of dissolution. — (a) The corporation shall then file a certified copy of the articles of dissolution with the department, and present to the department its certificate of authority issued or renewed under IC 27-1-6-18 for cancellation. The department shall file the certified copy of the articles of dissolution and shall cancel the said certificate of authority and endorse the cancellation thereon, and return the cancelled certificate of authority to the corporation or its representatives.

(b) The corporation shall then file for record with the county recorder of the county in which the articles of incorporation were or should have been recorded, as provided in IC 27-1-6-13, one (1) of the triplicate originals of the articles of dissolution bearing the endorsement of the approval of the secretary of state as provided for in section 6 [IC 27-1-10-6] of this chapter. [Acts 1935, ch. 162, § 137, p. 588; P.L.252-1985, § 51.]

27-1-10-8. Effect of certificate of dissolution. — (a) Upon the issuance of the certificate of dissolution and the recording of the articles of dissolution, as provided in section 7 [IC 27-1-10-7] of this chapter, the corporation shall be dissolved and its existence shall cease.

(b) The dissolution of any corporation in accordance with the provisions of this article shall not take away or impair any remedy against such corporation, its directors, officers, or shareholders, for any liability incurred by the corporation previous to its dissolution if suit is brought and service of process is had, as provided by the laws of this state, within two (2) years after the date of such dissolution. [Acts 1935, ch. 162, § 138, p. 588; P.L.252-1985, § 52.]

Collateral References. Dissolved insurance corporation's power to participate in arbitration proceedings. 71 A.L.R.2d 1121.

CHAPTER 11

INSURANCE LAW — REORGANIZATION OF EXISTING CORPORATIONS

SECTION.

- 27-1-11-1. Acceptance of this article.
- 27-1-11-2. Articles of reorganization.
- 27-1-11-3. Procedure for reorganization.
- 27-1-11-4. Filing articles of reorganization.
- 27-1-11-5. Certificate of reorganization.

SECTION.

- 27-1-11-6. Filing and recording of articles of reorganization.
- 27-1-11-7. Effect of certificate of reorganization.

27-1-11-1. Acceptance of this article. — Any stock company or mutual company organized before March 8, 1935, under any of the laws of this state may reorganize under the provisions of this article and thereafter avail itself of the rights, privileges, immunities, and franchises provided by this article by complying with the provisions of this chapter. Nothing in this chapter shall be construed or interpreted as permitting or authorizing the reorganization of a mutual company as a stock company. [Acts 1935, ch. 162, § 139, p. 588; P.L.252-1985, § 53.]

Cross References. Acceptance of reorganization act, IC 27-1-19-1.

Changing mutual fire companies to stock companies, IC 27-3-2.

Reorganization of foreign companies, IC 27-1-19.

27-1-11-2. Articles of reorganization. — The board of directors of such company desiring to reorganize under this article shall, by resolution adopted by a majority vote of the members of such board, approve the articles of reorganization setting forth:

- (1) The name of the corporation;
- (2) The location of its principal office;
- (3) The date of its incorporation or organization;
- (4) A designation of the statute under which it was organized;
- (5) A declaration that it accepts all of the terms and provisions of this article; and
- (6) A restatement of such provisions of its articles of incorporation or association as may be deemed desirable so long as the provisions restated would have been authorized by this article as provisions of original articles of incorporation for a corporation organized under this article. [Acts 1935, ch. 162, § 140, p. 588; P.L.252-1985, § 54.]

Cross References. Contents of articles of reorganization of foreign companies, IC 27-1-19-2.

27-1-11-3. Procedure for reorganization. — (a) The resolution of the board of directors approving the articles of reorganization shall direct that the articles be submitted to a vote of the shareholders, members, or policyholders of such corporation entitled to vote in respect thereof, at a designated meeting thereof, which may be an annual meeting of shareholders, members, or policyholders or a special meeting of the shareholders, members, or policyholders, entitled to vote in respect thereof. If the designated meeting is an annual meeting, notice of the submission of the articles of reorganization shall be included in the notice of such annual meeting. If the designated meeting is a special meeting of the shareholders, members, or policyholders entitled to vote in respect thereof, such meeting shall be called by the resolution designating the meeting, and notice of such meeting shall be given at the time and in the manner as provided in IC 27-1-7-7.

(b) The articles of reorganization so approved shall be submitted to a vote of the shareholders, members, or policyholders entitled to vote in respect thereof at the meeting directed by the resolution of the board of directors approving the articles, and shall be adopted upon receiving the affirmative vote of the holders of two-thirds ($\frac{2}{3}$) of the outstanding shares entitled to vote in respect thereof, if a stock company, or not less than two-thirds ($\frac{2}{3}$) of the members or policyholders present and voting at such meeting, if other than a stock company. The shareholders, members, or policyholders of a corporation entitled to vote in respect of the organization of such corporation shall be the shareholders entitled to vote under IC 27-1-7-8 and the members or policyholders entitled to vote under IC 27-1-7-9. [Acts 1935, ch. 162, § 141, p. 588; P.L.252-1985, § 55.]

Cross References. Procedure, IC 27-1-19-3.

27-1-11-4. Filing articles of reorganization. — (a) Upon the approval and adoption thereof, the articles of reorganization shall be filed in triplicate originals, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and acknowledged and sworn to before a notary public by the officer signing the same and shall be presented in triplicate to the department at its office.

(b) The department is hereby authorized, in its discretion, to approve or disapprove the articles of reorganization, and if the department shall approve the articles of reorganization it shall endorse its approval thereon as required in IC 27-1-6-8 and present the same to the secretary of state for the state of Indiana for his approval. [Acts 1935, ch. 162, § 142, p. 588; P.L.252-1985, § 56.]

27-1-11-5. Certificate of reorganization. — Upon the presentation of the articles of reorganization, the secretary of state, if he finds they conform to law, shall indorse his approval on each of the triplicate copies of the

articles, and when all fees have been paid as required by law, shall file one (1) copy of the articles in his office, issue a certificate of reorganization, and return two (2) copies of the articles of reorganization, bearing the indorsement of his approval, together with the certificate of reorganization to the corporation or its representatives. [Acts 1935, ch. 162, § 143, p. 588.]

Cross References. Fees and charges payable to the insurance department, IC 27-1-3-15.

Fees payable by all domestic corporations to the secretary of state, IC 23-1-18-3.

Fees payable to secretary of state by insurance companies organized or reorganized under the laws of this state, IC 27-1-20-13.

27-1-11-6. Filing and recording of articles of reorganization. —

(a) The corporation shall then file a certified copy of the articles of reorganization with the department and present to the department its certificate of authority issued or renewed under IC 27-1-6-18 for cancellation. The department shall file the certified copy of articles of reorganization and shall cancel the said certificate of authority and endorse the cancellation thereon, and issue a new certificate of authority to the corporation under the provisions of IC 27-1-6-18.

(b) The corporation shall then file for record with the county recorder of the county in which the principal office of the corporation is located, one (1) of the triplicate copies of the articles of reorganization bearing the endorsement of the approval of the secretary of state as provided for in section 5 [IC 27-1-11-5] of this chapter.

(c) A corporation which is reorganized in accordance with the provisions of this chapter shall not exercise any new power, right, or authority conferred by, or take any action pursuant to, such reorganization until subsections (a) and (b) have been complied with. If a corporation exercises any such new power, right, or authority or takes any such action in violation of this section, the officers and directors who participated therein shall be severally liable for any debts or liabilities of the corporation incurred thereby or arising therefrom. [Acts 1935, ch. 162, § 144, p. 588; P.L.252-1985, § 57.]

27-1-11-7. Effect of certificate of reorganization. — Upon the issuance of the certificate of reorganization by the secretary of state, the filing for record of the articles with the department and the county recorder as provided in section 6 [IC 27-1-11-6] of this chapter, and the issuance of the new certificate of authority provided for in section 6 of this chapter:

(1) The reorganization shall become effective;

(2) The corporation shall be entitled to all of the rights, privileges, immunities, powers, and franchises and be subject to all of the penalties, liabilities, and restrictions by the provisions of this article granted to or imposed upon corporations organized under this article; and

(3) The articles of incorporation or organization shall be deemed to be amended to the extent, if any, that any provision or provisions of such articles shall be restated in the articles of reorganization as provided by section 2 [IC 27-1-11-2] of this chapter. [Acts 1935, ch. 162, § 145, p. 588; P.L.252-1985, § 58.]

CHAPTER 12

INSURANCE LAW — LIFE INSURANCE COMPANIES

SECTION.

- 27-1-12-1. Scope of powers.
- 27-1-12-2. Investments — Limitations.
- 27-1-12-2.1. [Repealed.]
- 27-1-12-2.2. Derivative transactions — Hedging transactions — Income generation transactions — Replication transactions.
- 27-1-12-2.4. Participation in investment pools.
- 27-1-12-2.5. Limitations on investments — Exceptions — Investments in open-end diversified management companies — "Pension contracts" defined.
- 27-1-12-3. Real estate.
- 27-1-12-3.5. Intangible assets attributed to investment in subsidiary.
- 27-1-12-4. Amortization.
- 27-1-12-5. Required provisions for life policies issued after July 1, 1935, and before a date not later than January 1, 1948.
- 27-1-12-6. Required provisions for life policies issued on or after a date not later than January 1, 1948.
- 27-1-12-7. Standard nonforfeiture provisions of life policies issued on or after a date not later than January 1, 1948.
- 27-1-12-8. Prohibited provisions for life policies.
- 27-1-12-9. Valuation of life policies issued before a date not later than January 1, 1948.
- 27-1-12-10. Valuation of life policies and contracts issued on or after a date not later than January 1, 1948 — Valuation of group annuity and endowment contracts.
- 27-1-12-10.1. Actuary's opinion.
- 27-1-12-10.5. Establishment of reserves.
- 27-1-12-11. Deposit of securities.
- 27-1-12-12. Right of company to select transition date.
- 27-1-12-13. Filing of policy forms.
- 27-1-12-14. Beneficiaries under life insurance policies.
- 27-1-12-15. Insurance contracts by or for the benefit of minors.
- 27-1-12-16. Designation of trustee to receive proceeds of insurance or annuity contracts.
- 27-1-12-17. Corporations authorized to insure officers and employees.
- 27-1-12-17.1. Insurable interest in life of employee — Proceeds exempt from creditors or dependents.

SECTION.

- 27-1-12-18. Extension of time for premium payment.
- 27-1-12-19. Addition of loan interest to principal.
- 27-1-12-20. Premium deposits.
- 27-1-12-21. Holding proceeds of policies in trust.
- 27-1-12-22. Cessation of business.
- 27-1-12-23. Stock life insurance companies may become mutuals.
- 27-1-12-24. Stock operations prohibited.
- 27-1-12-25. Misrepresentations prohibited.
- 27-1-12-26. False statement — Penalty.
- 27-1-12-27, 27-1-12-28. [Repealed.]
- 27-1-12-29. Group policies — Exemption from liability for debts — Premiums not exempt — Insurer discharge from liability.
- 27-1-12-30. Group policies — Assignments.
- 27-1-12-31. Group policies — Classification.
- 27-1-12-32. Assets, capital or surplus of companies issuing insurance on segregated investment account plan.
- 27-1-12-33. Variable life insurance policies — Contents — Regulations.
- 27-1-12-34. [Repealed.]
- 27-1-12-34.1. Wholesale, franchise or employee life insurance policies — Required provisions.
- 27-1-12-35. Interest accrual on unpaid insurance policy proceeds.
- 27-1-12-36. [Repealed.]
- 27-1-12-37. Group life insurance policies — Qualified groups and insureds.
- 27-1-12-38. Group life insurance policies — Public policy considerations — Out-of-state policies — Payment of premiums — Denial of coverage for individual uninsurability.
- 27-1-12-39. Group life insurance policies — Notice of compensation to sponsoring or endorsing entity.
- 27-1-12-40. Group life insurance policies — Insuring of family members or dependents.
- 27-1-12-41. Group life insurance policies — Required provisions.
- 27-1-12-42. Group life insurance policies — Notice of right to convert to individual policy.
- 27-1-12-43. Life insurance policies — Provision for return of policy.

27-1-12-1. Scope of powers. — In addition to the general rights, privileges, and powers conferred by IC 27-1-5 through IC 27-1-13 and IC 27-11 and subject to the limitations and restrictions contained in this article and in the articles of incorporation, every life insurance company shall possess and may exercise the rights, privileges, and powers enumerated in this chapter. [Acts 1935, ch. 162, § 146, p. 588; P.L.252-1985, § 59; P.L.3-1990, § 96.]

Cross References. Assessment companies, IC 27-8-1-1 — IC 27-8-2-2.
Credit life, health and accident insurance, IC 27-8-4.

Fraternal benefit societies, IC 27-11.

Group life insurance, IC 27-1-12-29 — IC 27-1-12-31.

Mutual life companies, IC 27-8-1.

Opinions of Attorney General. A foreign life insurance company, qualified to do business in Indiana, may exercise the same rights, privileges, and powers in Indiana which are exercised in this state by domestic companies. 1949, No. 93, p. 353.

27-1-12-2. Investments — Limitations. — (a) The following definitions apply to this section:

(1) "Acceptable collateral" means, as to securities lending transactions:

- (A) cash;
- (B) cash equivalents;
- (C) letters of credit; and
- (D) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) "Acceptable collateral" means, as to lending foreign securities, sovereign debt that is rated:

- (A) A- or higher by Standard & Poor's Corporation;
- (B) A3 or higher by Moody's Investors Service, Inc.;
- (C) A- or higher by Duff and Phelps, Inc.; or
- (D) 1 by the Securities Valuation Office.

(3) "Acceptable collateral" means, as to repurchase transactions:

- (A) cash;
- (B) cash equivalents; and
- (C) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(4) "Acceptable collateral" means, as to reverse repurchase transactions:

- (A) cash; and
- (B) cash equivalents.

(5) "Admitted assets" means assets permitted to be reported as admitted assets on the statutory financial statement of the life insurance company most recently required to be filed with the commissioner.

(6) "Business entity" means:

- (A) a sole proprietorship;
- (B) a corporation;
- (C) a limited liability company;

- (D) an association;
- (E) a partnership;
- (F) a joint stock company;
- (G) a joint venture;
- (H) a mutual fund;
- (I) a trust;
- (J) a joint tenancy; or
- (K) other, similar form of business organization;

whether organized for-profit or not-for-profit.

(7) "Cash" means any of the following:

- (A) United States denominated paper currency and coins.
- (B) Negotiable money orders and checks.
- (C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

(8) "Cash equivalent" means any of the following:

- (A) A certificate of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (B) A banker's acceptance issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (C) A government money market mutual fund.
- (D) A class one money market mutual fund.

(9) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication either using the bond class one reserve factor or because it is exempt from asset valuation reserve requirements.

(10) "Dollar roll transaction" means two (2) simultaneous transactions that have settlement dates not more than ninety-six (96) days apart and that meet the following description:

(A) In one (1) transaction, a life insurance company sells to a business entity one (1) or both of the following:

(i) Asset-backed securities that are issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation or the successor of an entity referred to in this item.

(ii) Other asset-backed securities referred to in Section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1), as amended.

(B) In the other transaction, the life insurance company is obligated to purchase from the same business entity securities that are substantially similar to the securities sold under clause (A).

(11) "Domestic jurisdiction" means:

- (A) the United States;
- (B) any state, territory, or possession of the United States;

- (C) the District of Columbia;
 - (D) Canada; or
 - (E) any province of Canada.
- (12) "Earnings available for fixed charges" means income, after deducting:
- (A) operating and maintenance expenses other than expenses that are fixed charges;
 - (B) taxes other than federal and state income taxes;
 - (C) depreciation; and
 - (D) depletion;
- but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of a business entity.
- (13) "Fixed charges" includes:
- (A) interest on funded and unfunded debt;
 - (B) amortization of debt discount; and
 - (C) rentals for leased property.
- (14) "Foreign currency" means a currency of a foreign jurisdiction.
- (15) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.
- (16) "Government money market mutual fund" means a money market mutual fund that at all times:
- (A) invests only in:
 - (i) obligations that are issued, guaranteed, or insured by the United States; or
 - (ii) collateralized repurchase agreements composed of obligations that are issued, guaranteed, or insured by the United States; and
 - (B) qualifies for investment without a reserve pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication.
- (17) "Guaranteed or insured," when used in reference to an obligation acquired under this section, means that the guarantor or insurer has agreed to:
- (A) perform or insure the obligation of the obligor or purchase the obligation; or
 - (B) be unconditionally obligated, until the obligation is repaid, to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.
- (18) "Investment company" means:
- (A) an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended; or
 - (B) a person described in Section 3(c) of the Investment Company Act of 1940.
- (19) "Investment company series" means an investment portfolio of an investment company that is organized as a series company to which assets of the investment company have been specifically allocated.
- (20) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit that is:
- (A) issued or confirmed by; and

(B) payable and presentable at;
a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the "Purposes and Procedures of the Securities Valuation Office" or any successor publication. To constitute acceptable collateral for the purposes of paragraph 29 of subsection (b) of this section, a letter of credit must have an expiration date beyond the term of the subject transaction.

(21) "Market value" means the following:

(A) As to cash, the amount of the cash.

(B) As to cash equivalents, the amount of the cash equivalents.

(C) As to letters of credit, the amount of the letters of credit.

(D) As to a security as of any date:

(i) the price for the security on that date obtained from a generally recognized source, or the most recent quotation from such a source;
or

(ii) if no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction; plus accrued but unpaid income on the security to the extent not included in the price as of that date.

(22) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(23) "Multilateral development bank" means an international development organization of which the United States is a member.

(24) "Mutual fund" means:

(A) an investment company; or

(B) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(25) "Obligation" means any of the following:

(A) A bond.

(B) A note.

(C) A debenture.

(D) Any other form of evidence of debt.

(26) "Person" means:

(A) an individual;

(B) a business entity;

(C) a multilateral development bank; or

(D) a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise.

(27) "Repurchase transaction" means a transaction in which a life insurance company purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the life insurance company at a specified price, either within a specified period of time or upon demand.

(28) "Reverse repurchase transaction" means a transaction in which a life insurance company sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(29) "Securities lending transaction" means a transaction in which securities are loaned by a life insurance company to a business entity that is obligated to return the loaned securities or equivalent securities to the life insurance company, either within a specified period of time or upon demand.

(30) "Securities Valuation Office" refers to:

(A) the Securities Valuation Office of the National Association of Insurance Commissioners; or

(B) any successor of the office referred to in Clause (A) established by the National Association of Insurance Commissioners.

(31) "Series company" means an investment company that is organized as a series company (as defined in Rule 18f-2(a) adopted under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended).

(32) "Supported", when used in reference to an obligation, by whomever issued or made, means that:

(a) repayment of the obligation by:

(i) a domestic jurisdiction or by an administration, agency, authority, or instrumentality of a domestic jurisdiction; or

(ii) a business entity;

as the case may be, is secured by real or personal property of value at least equal to the principal amount of the obligation by means of mortgage, assignment of vendor's interest in one (1) or more conditional sales contracts, other title retention device, or by means of other security interest in such property for the benefit of the holder of the obligation; and

(b) the:

(i) domestic jurisdiction or administration, agency, authority, or instrumentality of the domestic jurisdiction; or

(ii) business entity;

as the case may be, has entered into a firm agreement to rent or use the property pursuant to which it is obligated to pay money as rental or for the use of such property in amounts and at times which shall be sufficient, after provision for taxes upon and other expenses of use of the property, to repay in full the obligation with interest and when such agreement and the money obligated to be paid thereunder are assigned, pledged, or secured for the benefit of the holder of the obligation. However, where the security for the repayment of the obligation consists of a first mortgage lien or deed of trust on a fee interest in real property, the obligation may provide for the amortization, during the initial, fixed period of the lease or contract, of less than one hundred percent (100%) of the obligation if there is pledged or assigned, as additional security for the obligation, sufficient rentals payable under the lease, or of contract payments, to secure

the amortized obligation payments required during the initial, fixed period of the lease or contract, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower, and if there is to be left unamortized at the end of such period an amount not greater than the original appraised value of the land only, exclusive of all improvements, as prescribed by law.

(b) Investments of domestic life insurance companies at the time they are made shall conform to the following categories, conditions, limitations, and standards:

1. Obligations of a domestic jurisdiction or of any administration, agency, authority, or instrumentality of a domestic jurisdiction.
2. Obligations guaranteed, supported, or insured as to principal and interest by a domestic jurisdiction or by an administration, agency, authority, or instrumentality of a domestic jurisdiction.
3. Obligations issued under or pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14) as in effect on December 31, 1990, or the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) as in effect on December 31, 1990, interest bearing obligations of the FSLIC Resolution Fund or shares of any institution whose deposits are insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation to the extent that such shares are insured, obligations issued or guaranteed by a multilateral development bank, and obligations issued or guaranteed by the African Development Bank.
4. Obligations issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village, or other civil administration, agency, authority, instrumentality, or subdivision of a domestic jurisdiction, providing such obligations are authorized by law and are:
 - (a) direct and general obligations of the issuing, guaranteeing or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality;
 - (b) payable from designated revenues pledged to the payment of the principal and interest thereof; or
 - (c) improvement bonds or other obligations constituting a first lien, except for tax liens, against all of the real estate within the improvement district or on that part of such real estate not discharged from such lien through payment of the assessment. The area to which such improvement bonds or other obligations relate shall be situated within the limits of a town or city and at least fifty percent (50%) of the properties within such area shall be improved with business buildings or residences.
5. Loans evidenced by obligations secured by first mortgage liens on otherwise unencumbered real estate or otherwise unencumbered leaseholds having at least fifty (50) years of unexpired term, such real estate, or leaseholds to be located in a domestic jurisdiction. Such loans shall not exceed eighty percent (80%) of the fair value of the security determined in a manner satisfactory to the department, except that the

percentage stated may be exceeded if and to the extent such excess is guaranteed or insured by:

- (a) a domestic jurisdiction or by an administration, agency, authority, or instrumentality of any domestic jurisdiction; or
- (b) a private mortgage insurance corporation approved by the department.

If improvements constitute a part of the value of the real estate or leaseholds, such improvements shall be insured against fire for the benefit of the mortgagee in an amount not less than the difference between the value of the land and the unpaid balance of the loan.

For the purpose of this section, real estate or a leasehold shall not be deemed to be encumbered by reason of the existence in relation thereto of:

- (1) liens inferior to the lien securing the loan made by the life insurance company;
- (2) taxes or assessment liens not delinquent;
- (3) instruments creating or reserving mineral, oil, water or timber rights, rights-of-way, common or joint driveways, sewers, walls, or utility connections;
- (4) building restrictions or other restrictive covenants; or
- (5) an unassigned lease reserving rents or profits to the owner.

A loan that is authorized by this paragraph remains qualified under this paragraph notwithstanding any refinancing, modification, or extension of the loan. Investments authorized by this paragraph shall not in the aggregate exceed forty-five percent (45%) of the life insurance company's admitted assets.

6. Loans evidenced by obligations guaranteed or insured, but only to the extent guaranteed or insured, by a domestic jurisdiction or by any agency, administration, authority, or instrumentality of any domestic jurisdiction, and secured by second or subsequent mortgages or deeds of trust on real estate or leaseholds, provided the terms of the leasehold mortgages or deeds of trust shall not exceed four-fifths ($\frac{4}{5}$) of the unexpired lease term, including enforceable renewable options remaining at the time of the loan.

7. Real estate contracts involving otherwise unencumbered real estate situated in a domestic jurisdiction, to be secured by the title to such real estate, which shall be transferred to the life insurance company or to a trustee or nominee of its choosing. For statement and deposit purposes, the value of a contract acquired pursuant to this paragraph shall be whichever of the following amounts is the least:

- (a) eighty percent (80%) of the contract price of the real estate;
- (b) eighty percent (80%) of the fair value of the real estate at the time the contract is purchased, such value to be determined in a manner satisfactory to the department; or
- (c) the amount due under the contract.

For the purpose of this paragraph, real estate shall not be deemed encumbered by reason of the existence in relation thereto of: (1) taxes or assessment liens not delinquent; (2) instruments creating or reserving

mineral, oil, water or timber rights, rights-of-way, common or joint driveways, sewers, walls or utility connections; (3) building restrictions or other restrictive covenants; or (4) an unassigned lease reserving rents or profits to the owner. Fire insurance upon improvements constituting a part of the real estate described in the contract shall be maintained in an amount at least equal to the unpaid balance due under the contract or the fair value of improvements, whichever is the lesser.

8. Improved or unimproved real property, whether encumbered or unencumbered, or any interest therein, held directly or evidenced by joint venture interests, general or limited partnership interests, trust certificates, or any other instruments, and acquired by the life insurance company as an investment, which real property, if unimproved, is developed within five (5) years. Real property acquired for investment under this paragraph, whether leased or intended to be developed for commercial or residential purposes or otherwise lawfully held, is subject to the following conditions and limitations:

(a) The real estate shall be located in a domestic jurisdiction.

(b) The admitted assets of the life insurance company must exceed twenty-five million dollars (\$25,000,000).

(c) The life insurance company shall have the right to expend from time to time whatever amount or amounts may be necessary to conform the real estate to the needs and purposes of the lessee and the amount so expended shall be added to and become a part of the investment in such real estate.

(d) The value for statement and deposit purposes of an investment under this paragraph shall be reduced annually by amortization of the costs of improvement and development, less land costs, over the expected life of the property, which value and amortization shall for statement and deposit purposes be determined in a manner satisfactory to the commissioner. In determining such value with respect to the calendar years in which an investment begins or ends with respect to a point in time other than the beginning or end of a calendar year, the amortization provided above shall be made on a proportional basis.

(e) Fire insurance shall be maintained in an amount at least equal to the insurable value of the improvements or the difference between the value of the land and the value at which such real estate is carried for statement and deposit purposes, whichever amount is smaller.

(f) Real estate acquired in any of the manners described and sanctioned under section 3 [IC 27-1-12-3] of this chapter, or otherwise lawfully held, except paragraph 5 of that section which specifically relates to the acquisition of real estate under this paragraph, shall not be affected in any respect by this paragraph unless such real estate at or subsequent to its acquisition fulfills the conditions and limitations of this paragraph, and is declared by the life insurance company in a writing filed with the department to be an investment under this paragraph. The value of real estate acquired under section

3 of this chapter, or otherwise lawfully held, and invested under this paragraph shall be initially that at which it was carried for statement and deposit purposes under that section.

(g) Neither the cost of each parcel of improved real property nor the aggregate cost of all unimproved real property acquired under the authority of this paragraph may exceed two percent (2%) of the life insurance company's admitted assets. For purposes of this paragraph, "unimproved real property" means land containing no structures intended for commercial, industrial, or residential occupancy, and "improved real property" consists of all land containing any such structure. When applying the limitations of subparagraph (d) of this paragraph, unimproved real property becomes improved real property as soon as construction of any commercial, industrial, or residential structure is so completed as to be capable of producing income. In the event the real property is mortgaged with recourse to the life insurance company or the life insurance company commences a plan of construction upon real property at its own expense or guarantees payment of borrowed funds to be used for such construction, the total project cost of the real property will be used in applying the two percent (2%) test. Further, no more than ten percent (10%) of the life insurance company's admitted assets may be invested in all property, measured by the property value for statement and deposit purposes as defined in this paragraph, held under this paragraph at the same time.

9. Deposits of cash in a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation, or certificates of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

10. Bank and bankers' acceptances and other bills of exchange of kinds and maturities eligible for purchase or rediscount by federal reserve banks.

11. Obligations that are issued, guaranteed, assumed, or supported by a business entity organized under the laws of a domestic jurisdiction and that are rated:

(a) BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper);

(b) Baa 3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper);

(c) BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper); or

(d) 1 or 2 by the Securities Valuation Office.

Investments may also be made under this paragraph in obligations that have not received a rating if the earnings available for fixed charges of the business entity for the period of its five (5) fiscal years next preceding the date of purchase shall have averaged per year not less than one and one-half (1 ½) times its average annual fixed charges applicable to such period and if during either of the last two (2) years of such period such earnings available for fixed charges shall have been

not less than one and one-half ($1\frac{1}{2}$) times its fixed charges for such year. However, if the business entity is a finance company or other lending institution at least eighty percent (80%) of the assets of which are cash and receivables representing loans or discounts made or purchased by it, the multiple shall be one and one-quarter ($1\frac{1}{4}$) instead of one and one-half ($1\frac{1}{2}$).

(A) Obligations issued, guaranteed, or assumed by a business entity organized under the laws of a domestic jurisdiction, which obligations have not received a rating or, if rated, have not received a rating that would qualify the obligations for investment under paragraph 11 of this section. Investments authorized by this paragraph may not exceed ten percent (10%) of the life insurance company's admitted assets.

12. Preferred stock of, or common or preferred stock guaranteed as to dividends by, any corporation organized under the laws of a domestic jurisdiction, which over the period of the seven (7) fiscal years immediately preceding the date of purchase earned an average amount per annum at least equal to five percent (5%) of the par value of its common and preferred stock (or, in the case of stocks having no par value, of its issued or stated value) outstanding at date of purchase, or which over such period earned an average amount per annum at least equal to two (2) times the total of its annual interest charges, preferred dividends and dividends guaranteed by it, determined with reference to the date of purchase. No investment shall be made under this paragraph in a stock upon which any dividend is in arrears or has been in arrears for ninety (90) days within the immediately preceding five (5) year period.

13. Common stock of any solvent corporation organized under the laws of a domestic jurisdiction which over the seven (7) fiscal years immediately preceding purchase earned an average amount per annum at least equal to six percent (6%) of the par value of its capital stock (or, in the case of stock having no par value, of the issued or stated value of such stock) outstanding at date of purchase, but the conditions and limitations of this paragraph shall not apply to the special area of investment to which paragraph 23 of this section pertains.

(A) Stock or shares of any mutual fund that:

(a) has been in existence for a period of at least five (5) years immediately preceding the date of purchase, has assets of not less than twenty-five million dollars (\$25,000,000) at the date of purchase, and invests substantially all of its assets in investments permitted under this section; or

(b) is a class one money market mutual fund or a class one bond mutual fund.

Investments authorized by this paragraph 13(A) in mutual funds having the same or affiliated investment advisers shall not at any one (1) time exceed in the aggregate ten percent (10%) of the life insurance company's admitted assets. The limitations contained in paragraph 22 of this subsection apply to investments in the types of mutual funds described in subparagraph (a). For the purposes of this

paragraph, “class one bond mutual fund” means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the “Purposes and Procedures of the Securities Valuation Office” or any successor publication.

The aggregate amount of investments under this paragraph may be limited by the commissioner if the commissioner finds that investments under this paragraph may render the operation of the life insurance company hazardous to the company’s policyholders or creditors or to the general public.

14. Loans upon the pledge of any of the investments described in this section other than real estate and those qualifying solely under paragraph 20 of this subsection, but the amount of such a loan shall not exceed seventy-five percent (75%) of the value of the investment pledged.

15. Real estate acquired or otherwise lawfully held under the provisions of IC 27-1, except under paragraph 7 or 8 of this subsection, which real estate as an investment shall also include the value of improvements or betterments made thereon subsequent to its acquisition. The value of such real estate for deposit and statement purposes is to be determined in a manner satisfactory to the department.

(A) Tangible personal property, equipment trust obligations, or other instruments evidencing an ownership interest or other interest in tangible personal property when the life insurance company purchasing such property has admitted assets in excess of twenty-five million dollars (\$25,000,000), and where there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use of such personal property from a corporation whose obligations would be eligible for investment under the provisions of paragraph 11 of this subsection, provided that the aggregate of such payments together with the estimated salvage value of such property at the end of its minimum useful life, to be determined in a manner acceptable to the insurance commissioner, and the estimated tax benefits to the insurer resulting from ownership of such property, is adequate to return the cost of the investment in such property, and provided further, that each net investment in tangible personal property for which any single private corporation is obligated to pay rental, purchase, or other obligatory payments thereon does not exceed one-half of one percent ($\frac{1}{2}\%$) of the life insurance company’s admitted assets, and the aggregate net investments made under the provisions of this paragraph do not exceed five percent (5%) of the life insurance company’s admitted assets.

16. Loans to policyholders of the life insurance company in amounts not exceeding in any case the reserve value of the policy at the time the loan is made.

17. A life insurance company doing business in a foreign jurisdiction may, if permitted or required by the laws of such jurisdiction, invest funds equal to its obligations in such jurisdiction in investments legal for life insurance companies domiciled in such jurisdiction or doing business therein as alien companies.

(A) Investments in (i) obligations issued, guaranteed, assumed, or supported by a foreign jurisdiction or by a business entity organized under the laws of a foreign jurisdiction and (ii) preferred stock and common stock issued by any such business entity, if the obligations of such foreign jurisdiction or business entity, as appropriate, are rated:

- (a) BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper);
- (b) Baa 3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper);
- (c) BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper); or
- (d) 1 or 2 by the Securities Valuation Office.

If the obligations issued by a business entity organized under the laws of a foreign jurisdiction have not received a rating, investments may nevertheless be made under this paragraph in such obligations and in the preferred and common stock of the business entity if the earnings available for fixed charges of the business entity for a period of five (5) fiscal years preceding the date of purchase have averaged at least three (3) times its average fixed charges applicable to such period, and if during either of the last two (2) years of such period, the earnings available for fixed charges were at least three (3) times its fixed charges for such year. Investments authorized by this paragraph in a single foreign jurisdiction shall not exceed ten percent (10%) of the life insurance company's admitted assets. Subject to section 2.2(g) [IC 27-1-12-2.2(g)] of this chapter, investments authorized by this paragraph denominated in foreign currencies shall not in the aggregate exceed ten percent (10%) of a life insurance company's admitted assets, and investments in any one (1) foreign currency shall not exceed five percent (5%) of the life insurance company's admitted assets. Investments authorized by this paragraph and paragraph 17(B) shall not in the aggregate exceed twenty percent (20%) of the life insurance company's admitted assets. This paragraph in no way limits or restricts investments which are otherwise specifically eligible for deposit under this section.

(B) Investments in:

(a) obligations issued, guaranteed, or assumed by a foreign jurisdiction or by a business entity organized under the laws of a foreign jurisdiction; and

(b) preferred stock and common stock issued by a business entity organized under the laws of a foreign jurisdiction;

which investments are not eligible for investment under paragraph 17.(A).

Investments authorized by this paragraph 17(B) shall not in the aggregate exceed five percent (5%) of the life insurance company's admitted assets. Subject to section 2.2(g) of this chapter, if investments authorized by this paragraph 17(B) are denominated in a foreign currency, the investments shall not, as to such currency, exceed two percent (2%) of the life insurance company's admitted

assets. Investments authorized by this paragraph 17(B) in any one (1) foreign jurisdiction shall not exceed two percent (2%) of the life insurance company's admitted assets.

Investments authorized by paragraph 17(A) of this subsection and this paragraph 17(B) shall not in the aggregate exceed twenty percent (20%) of the life insurance company's admitted assets.

18. To protect itself against loss, a company may in good faith receive in payment of or as security for debts due or to become due, investments or property which do not conform to the categories, conditions, limitations, and standards set out above.

19. A life insurance company may purchase for its own benefit any of its outstanding annuity or insurance contracts or other obligations and the claims of holders thereof.

20. A life insurance company may make investments although not conforming to the categories, conditions, limitations, and standards contained in paragraphs 1 through 11, 12 through 19, and 29 through 30.(A) of this subsection, but limited in aggregate amount to the lesser of:

- (a) ten percent (10%) of the company's admitted assets; or
- (b) the aggregate of the company's capital, surplus, and contingency reserves reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

This paragraph 20 does not apply to investments authorized by paragraph 11.(A) of this subsection.

(A) Investments under paragraphs 1 through 20 and paragraphs 29 through 30.(A) of this subsection are subject to the general conditions, limitations, and standards contained in paragraphs 21 through 28 of this subsection.

21. Investments in obligations (other than real estate mortgage indebtedness) and capital stock of, and in real estate and tangible personal property leased to, a single corporation, shall not exceed two percent (2%) of the life insurance company's admitted assets, taking into account the provisions of section 2.2(h) [IC 27-1-12-2.2(h)] of this chapter. The conditions and limitations of this paragraph shall not apply to investments under paragraph 13(A) of this subsection or the special area of investment to which paragraph 23 of this subsection pertains.

22. Investments in:

- (a) preferred stock; and
- (b) common stock;

shall not, in the aggregate, exceed twenty percent (20%) of the life insurance company's admitted assets, exclusive of assets held in segregated accounts of the nature defined in class 1(c) of IC 27-1-5-1. These limitations shall not apply to investments for the special purposes described in paragraph 23 of this subsection nor to investments in connection with segregated accounts provided for in class 1(c) of IC 27-1-5-1.

23. Limitations defined in paragraphs 13, 20, 21, 22, and 26 of this subsection upon the right of a life insurance company to invest in

(A) Investments in (i) obligations issued, guaranteed, assumed, or supported by a foreign jurisdiction or by a business entity organized under the laws of a foreign jurisdiction and (ii) preferred stock and common stock issued by any such business entity, if the obligations of such foreign jurisdiction or business entity, as appropriate, are rated:

- (a) BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper);
- (b) Baa 3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper);
- (c) BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper); or
- (d) 1 or 2 by the Securities Valuation Office.

If the obligations issued by a business entity organized under the laws of a foreign jurisdiction have not received a rating, investments may nevertheless be made under this paragraph in such obligations and in the preferred and common stock of the business entity if the earnings available for fixed charges of the business entity for a period of five (5) fiscal years preceding the date of purchase have averaged at least three (3) times its average fixed charges applicable to such period, and if during either of the last two (2) years of such period, the earnings available for fixed charges were at least three (3) times its fixed charges for such year. Investments authorized by this paragraph in a single foreign jurisdiction shall not exceed ten percent (10%) of the life insurance company's admitted assets. Subject to section 2.2(g) [IC 27-1-12-2.2(g)] of this chapter, investments authorized by this paragraph denominated in foreign currencies shall not in the aggregate exceed ten percent (10%) of a life insurance company's admitted assets, and investments in any one (1) foreign currency shall not exceed five percent (5%) of the life insurance company's admitted assets. Investments authorized by this paragraph and paragraph 17(B) shall not in the aggregate exceed twenty percent (20%) of the life insurance company's admitted assets. This paragraph in no way limits or restricts investments which are otherwise specifically eligible for deposit under this section.

(B) Investments in:

(a) obligations issued, guaranteed, or assumed by a foreign jurisdiction or by a business entity organized under the laws of a foreign jurisdiction; and

(b) preferred stock and common stock issued by a business entity organized under the laws of a foreign jurisdiction;

which investments are not eligible for investment under paragraph 17.(A).

Investments authorized by this paragraph 17(B) shall not in the aggregate exceed five percent (5%) of the life insurance company's admitted assets. Subject to section 2.2(g) of this chapter, if investments authorized by this paragraph 17(B) are denominated in a foreign currency, the investments shall not, as to such currency, exceed two percent (2%) of the life insurance company's admitted

assets. Investments authorized by this paragraph 17(B) in any one (1) foreign jurisdiction shall not exceed two percent (2%) of the life insurance company's admitted assets.

Investments authorized by paragraph 17(A) of this subsection and this paragraph 17(B) shall not in the aggregate exceed twenty percent (20%) of the life insurance company's admitted assets.

18. To protect itself against loss, a company may in good faith receive in payment of or as security for debts due or to become due, investments or property which do not conform to the categories, conditions, limitations, and standards set out above.

19. A life insurance company may purchase for its own benefit any of its outstanding annuity or insurance contracts or other obligations and the claims of holders thereof.

20. A life insurance company may make investments although not conforming to the categories, conditions, limitations, and standards contained in paragraphs 1 through 11, 12 through 19, and 29 through 30.(A) of this subsection, but limited in aggregate amount to the lesser of:

- (a) ten percent (10%) of the company's admitted assets; or
- (b) the aggregate of the company's capital, surplus, and contingency reserves reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

This paragraph 20 does not apply to investments authorized by paragraph 11.(A) of this subsection.

(A) Investments under paragraphs 1 through 20 and paragraphs 29 through 30.(A) of this subsection are subject to the general conditions, limitations, and standards contained in paragraphs 21 through 28 of this subsection.

21. Investments in obligations (other than real estate mortgage indebtedness) and capital stock of, and in real estate and tangible personal property leased to, a single corporation, shall not exceed two percent (2%) of the life insurance company's admitted assets, taking into account the provisions of section 2.2(h) [IC 27-1-12-2.2(h)] of this chapter. The conditions and limitations of this paragraph shall not apply to investments under paragraph 13(A) of this subsection or the special area of investment to which paragraph 23 of this subsection pertains.

22. Investments in:

- (a) preferred stock; and
- (b) common stock;

shall not, in the aggregate, exceed twenty percent (20%) of the life insurance company's admitted assets, exclusive of assets held in segregated accounts of the nature defined in class 1(c) of IC 27-1-5-1. These limitations shall not apply to investments for the special purposes described in paragraph 23 of this subsection nor to investments in connection with segregated accounts provided for in class 1(c) of IC 27-1-5-1.

23. Limitations defined in paragraphs 13, 20, 21, 22, and 26 of this subsection upon the right of a life insurance company to invest in

obligations and capital stock of corporations shall be inapplicable when, within IC 27-2-9, the result of such investment, whether in one (1) or more transactions, is to effect, between a life insurance company and another company, a relationship of primary and subsidiary companies, or to enlarge a life insurance company's investment in its subsidiary insurance company. However, except as otherwise provided in IC 27-2-9-3(e), the total of a life insurance company's investments in a company or companies to which it stands in the relation of primary company shall not at any time exceed ten percent (10%) of its admitted assets. In the event that a primary and subsidiary relationship ceases to exist between a life insurance company and another company, the life insurance company shall have until December 31 of the succeeding calendar year and such additional period of time as the commissioner may determine within which to conform its investments in stocks and securities of such other company to the conditions and limitations defined in this section, exclusive of this paragraph.

24. No investment, other than commercial bank deposits and loans on life insurance policies, shall be made unless authorized by the life insurance company's board of directors or a committee designated by the board of directors and charged with the duty of supervising loans or investments.

25. No life insurance company shall subscribe to or participate in any syndicate or similar underwriting of the purchase or sale of securities or property or enter into any transaction for such purchase or sale on account of said company, jointly with any other corporation, firm, or person, or enter into any agreement to withhold from sale any of its securities or property, but the disposition of its assets shall at all times be within its control. Nothing contained in this paragraph shall be construed to invalidate or prohibit an agreement by two (2) or more companies to join and share in the purchase of investments for bona fide investment purposes.

26. No life insurance company may invest in the stocks or obligations, except investments under paragraphs 9 and 10 of this subsection, of any corporation in which an officer of such life insurance company is either an officer or director. However, this limitation shall not apply with respect to such investments in:

- (a) a corporation which is a subsidiary or affiliate of such life insurance company; or
- (b) a trade association, provided such investment meets the requirements of paragraph 5 of this subsection.

27. Except for the purpose of mutualization provided for in section 23 [IC 27-1-12-23] of this chapter, or for the purpose of retirement of outstanding shares of capital stock pursuant to amendment of its articles of incorporation, or in connection with a plan approved by the commissioner for purchase of such shares by the life insurance company's officers, employees, or agents, no life insurance company shall invest in its own stock.

28. In applying the conditions, limitations, and standards prescribed in paragraphs 11, 12, and 13 of this subsection to the stocks or obligations

of a corporation which in the seven (7) year period preceding purchase of such stocks or obligations acquired its property or a substantial part thereof through consolidation, merger, or purchase, the earnings of the several predecessors or constituent corporations shall be consolidated.

29.A. Before a life insurance company may engage in securities lending transactions, repurchase transactions, reverse repurchase transactions, or dollar roll transactions, the life insurance company's board of directors must adopt a written plan that includes guidelines and objectives to be followed, including the following:

- (1) A description of how cash received will be invested or used for general corporate purposes of the company.
- (2) Operational procedures for managing interest rate risk, counterparty default risk, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction.
- (3) A statement of the extent to which the company may engage in securities lending transactions, repurchase transactions, reverse repurchase transactions, and dollar roll transactions.

B. A life insurance company must enter into a written agreement for all transactions authorized by this paragraph, other than dollar roll transactions. The written agreement:

- (1) must require the termination of each transaction not more than one (1) year after its inception or upon the earlier demand of the company; and
- (2) must be with the counterparty business entity, except that, for securities lending transactions, the agreement may be with an agent acting on behalf of the life insurance company if:

(A) the agent is:

- (i) a business entity, the obligations of which are rated BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper), Baa3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper), BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper), or 1 or 2 by the Securities Valuation Office;
 - (ii) a business entity that is a primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York; or
 - (iii) any other business entity approved by the commissioner;
- and

(B) the agreement requires the agent to enter into with each counterparty separate agreements that are consistent with the requirements of this paragraph.

C. Cash received in a transaction under this paragraph shall be:

(1) invested:

- (A) in accordance with this section 2; and
- (B) in a manner that recognizes the liquidity needs of the transaction; or

(2) used by the life insurance company for its general corporate purposes.

D. For as long as a transaction under this paragraph remains outstanding, the life insurance company or its agent or custodian shall maintain, as to acceptable collateral received in the transaction, either physically or through book entry systems of the Federal Reserve, the Depository Trust Company, the Participants Trust Company, or another securities depository approved by the commissioner:

- (1) possession of the acceptable collateral;
 - (2) a perfected security interest in the acceptable collateral; or
 - (3) in the case of a jurisdiction outside the United States:
 - (A) title to; or
 - (B) rights of a secured creditor to;
- the acceptable collateral.

E. The limitations set forth in paragraphs 17 and 21 of this subsection do not apply to transactions under this paragraph 29. For purposes of calculations made to determine compliance with this paragraph, no effect may be given to the future obligation of the life insurance company to:

- (1) resell securities, in the case of a repurchase transaction; or
- (2) repurchase securities, in the case of a reverse repurchase transaction.

F. A life insurance company shall not enter into a transaction under this paragraph if, as a result of the transaction, and after giving effect to the transaction:

- (1) the aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity under this paragraph would exceed five percent (5%) of the company's admitted assets (but in calculating the amount sold to or purchased from a business entity under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement); or
- (2) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this paragraph would exceed forty percent (40%) of the admitted assets of the company (provided, however, that this limitation does not apply to a reverse repurchase transaction if the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and is subject to a plan approved by the commissioner).

G. The following collateral requirements apply to all transactions under this paragraph:

- (1) In a securities lending transaction, the life insurance company must receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the company in the transaction as of that date. If at any time the market value of the acceptable collateral received from a particular business entity is less than the market value of all securities loaned by the company to that business entity, the business entity shall be obligated to

deliver additional acceptable collateral to the company, the market value of which, together with the market value of all acceptable collateral then held in connection with all securities lending transactions with that business entity, equals at least one hundred two percent (102%) of the market value of the loaned securities.

(2) In a reverse repurchase transaction, other than a dollar roll transaction, the life insurance company must receive acceptable collateral having a market value as of the transaction date equal to at least ninety-five percent (95%) of the market value of the securities transferred by the company in the transaction as of that date. If at any time the market value of the acceptable collateral received from a particular business entity is less than ninety-five percent (95%) of the market value of all securities transferred by the company to that business entity, the business entity shall be obligated to deliver additional acceptable collateral to the company, the market value of which, together with the market value of all acceptable collateral then held in connection with all reverse repurchase transactions with that business entity, equals at least ninety-five percent (95%) of the market value of the transferred securities.

(3) In a dollar roll transaction, the life insurance company must receive cash in an amount at least equal to the market value of the securities transferred by the company in the transaction as of the transaction date.

(4) In a repurchase transaction, the life insurance company must receive acceptable collateral having a market value equal to at least one hundred two percent (102%) of the purchase price paid by the company for the securities. If at any time the market value of the acceptable collateral received from a particular business entity is less than one hundred percent (100%) of the purchase price paid by the life insurance company in all repurchase transactions with that business entity, the business entity shall be obligated to provide additional acceptable collateral to the company, the market value of which, together with the market value of all acceptable collateral then held in connection with all repurchase transactions with that business entity, equals at least one hundred two percent (102%) of the purchase price. Securities acquired by a life insurance company in a repurchase transaction shall not be:

- (A) sold in a reverse repurchase transaction;
- (B) loaned in a securities lending transaction; or
- (C) otherwise pledged.

30. A life insurance company may invest in obligations or interests in trusts or partnerships regardless of the issuer, which are secured by:

- (a) investments authorized by paragraphs 1, 2, 3, 4, or 11 of this subsection; or
- (b) collateral with the characteristics and limitations prescribed for loans under paragraph 5 of this subsection.

For the purposes of this paragraph 30, collateral may be substituted for other collateral if it is in the same amount with the same or greater

interest rate and qualifies as collateral under subparagraph (a) or (b) of this paragraph.

(A) A life insurance company may invest in obligations or interests in trusts or partnerships, regardless of the issuer, secured by any form of collateral other than that described in subparagraphs (a) and (b) of paragraph 30 of this subsection, which obligations or interests in trusts or partnerships are rated:

(a) A- or higher by Standard & Poor's Corporation or Duff and Phelps, Inc.;

(b) A 3 or higher by Moody's Investor Service, Inc.; or

(c) 1 by the Securities Valuation Office.

Investments authorized by this paragraph may not exceed ten percent (10%) of the life insurance company's admitted assets.

31.A. A life insurance company may invest in short-term pooling arrangements as provided in this paragraph.

B. The following definitions apply throughout this paragraph:

(1) "Affiliate" means, as to any person, another person that, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the person.

(2) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or non-management services), or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(3) "Qualified bank" means a national bank, state bank, or trust company that at all times is not less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

C. A life insurer may participate in investment pools qualified under this paragraph that invest only in:

(1) obligations that are rated BBB- or higher by Standard & Poor's Corporation (or A-2 or higher in the case of commercial paper), Baa 3 or higher by Moody's Investors Service, Inc. (or P-2 or higher in the case of commercial paper), BBB- or higher by Duff and Phelps, Inc. (or D-2 or higher in the case of commercial paper), or 1 or 2 by the Securities Valuation Office, and have:

(A) a remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the

principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or

(B) a remaining maturity of three (3) years or less and a floating interest rate that resets not less frequently than quarterly on the basis of a current short-term index (for example, federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR) or commercial paper) and is not subject to a maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(2) government money market mutual funds or class one money market mutual funds; or

(3) securities lending, repurchase, and reverse repurchase and dollar roll transactions that meet the requirements of paragraph 29 of this subsection and any applicable regulations of the department;

provided that the investment pool shall not acquire investments in any one (1) business entity that exceed ten percent (10%) of the total assets of the investment pool.

D. For an investment pool to be qualified under this paragraph, the investment pool shall not:

(1) acquire securities issued, assumed, guaranteed, or insured by the life insurance company or an affiliate of the company; or

(2) borrow or incur any indebtedness for borrowed money, except for securities lending, reverse repurchase, and dollar roll transactions that meet the requirements of paragraph 29 of this subsection.

E. A life insurance company shall not participate in an investment pool qualified under this paragraph if, as a result of and after giving effect to the participation, the aggregate amount of participation then held by the company in all investment pools under this paragraph and section 2.4 [IC 27-1-12-2.4] of this chapter would exceed thirty-five percent (35%) of its admitted assets.

F. For an investment pool to be qualified under this paragraph:

(1) the manager of the investment pool must:

(A) be organized under the laws of the United States, a state or territory of the United States, or the District of Columbia, and designated as the pool manager in a pooling agreement; and

(B) be the life insurance company, an affiliated company, a business entity affiliated with the company, or a qualified bank or a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. 80a-I et seq.);

(2) the pool manager or an entity designated by the pool manager of the type set forth in subdivision (1) of this subparagraph F shall compile and maintain detailed accounting records setting forth:

(A) the cash receipts and disbursements reflecting each participant's proportionate participation in the investment pool;

- (B) a complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and
 - (C) other records which, on a daily basis, allow third parties to verify each participant's interest in the investment pool; and
- (3) the assets of the investment pool shall be held in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement or trust agreement with a qualified bank, which must:
- (A) state and recognize the claims and rights of each participant;
 - (B) acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its participation in the investment pool; and
 - (C) contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the qualified bank or any other person.

G. The pooling agreement for an investment pool qualified under this paragraph must be in writing and must include the following provisions:

- (1) Insurers, subsidiaries, or affiliates of insurers holding interests in the pool, or any pension or profit sharing plan of such insurers or their subsidiaries or affiliates, shall, at all times, hold one hundred percent (100%) of the interests in the investment pool.
- (2) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person.
- (3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
 - (A) each participant owns an undivided interest in the underlying assets of the investment pool; and
 - (B) the underlying assets of the investment pool are held solely for the benefit of each participant.
- (4) A participant or (in the event of the participant's insolvency, bankruptcy, or receivership) its trustee, receiver, or other successor-in-interest may withdraw all or any portion of its participation from the investment pool under the terms of the pooling agreement.
- (5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter. Payments upon withdrawals under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide for such payments to be made to the participants in one (1) of the following forms, at the discretion of the pool manager:
 - (A) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
 - (B) in kind, a pro rata share of each underlying asset; or

(C) in a combination of cash and in kind distributions, a pro rata share in each underlying asset.

(6) The records of the investment pool shall be made available for inspection by the commissioner. [Acts 1935, ch. 162, § 147, p. 588; 1937, ch. 288, § 1, p. 1317; 1939, ch. 63, § 3, p. 419; 1941, ch. 115, § 9, p. 315; 1945, ch. 175, § 1, p. 420; 1947, ch. 43, § 1; 1959, ch. 21, § 1; 1961, ch. 138, § 1; 1967, ch. 60, § 1; 1969, ch. 184, § 1; 1974, P.L. 121, § 1; 1975, P.L. 44, § 2; 1975, P.L. 279, § 1; 1981, P.L. 236, § 1; P.L.267-1987, § 1; P.L.49-1988, § 2; P.L.8-1991, § 8; P.L.26-1991, § 7; P.L.1-1992, § 145; P.L.186-1997, § 1.]

Cross References. Federal land bank and joint stock land bank bonds, IC 27-2-6-1.

Investment of funds in toll road revenue bonds of state, IC 8-15-1-1 — IC 8-15-1-3.

Legal investments of fiduciaries, IC 30-1-5-1.

Limitations, IC 27-1-21-1.

Segregated account plan, IC 27-1-5-2.

Supplemental provisions relative to investments, IC 27-1-21-1.

Indiana Law Journal. Consumer Warranty or Insurance Contract? A View Towards a Rational State Regulatory Policy, 51 Ind. L.J. 1103.

Opinions of Attorney General. Investments in oil, gas, and mineral leases, royalty interests, mineral interests excepted or reserved in or conveyed by deed, are of such

speculative and sometimes hazardous nature, that the department of insurance should not approve them without thorough investigation. 1939, p. 109.

Taking promissory notes for stock of a life insurance company and retaining them for a limited time does not constitute an illegal investment by the company, but such notes would not be eligible for deposit under IC 27-1-12-9. 1940, p. 7.

Purchase by life insurance company of its capital stock pledged by stockholder to secure promissory note given by him in payment therefor, upon default by him, did not violate former subsection (i) of IC 27-1-12-2 if the stock were accepted in good faith either in payment or to secure a debt due to the company. 1940, p. 27.

NOTES TO DECISIONS

Loan Contracts on Policies.

Auditors of state had accepted loan contracts habitually upon life policies as among the securities permitted by Acts 1899, ch. 28, § 22, as amended by Acts 1905, ch. 108, § 1, as a method of investing its funds, and attorneys general had advised auditors that such

loans were "loans upon its policies" within the statute, if the loan did not exceed the estimated reserve value of the policy when offered for deposit. *Hay v. Meridian Life & Trust Co.*, 57 Ind. App. 536, 101 N.E. 651 (1913).

Collateral References. Comment note on shareholders' suits against investment companies. 30 A.L.R.3d 1088.

27-1-12-2.1. [Repealed.]

Compiler's Notes. This section, concerning collateralized investments by insurance

companies, was repealed by P.L.26-1991, § 28, effective July 1, 1991.

27-1-12-2.2. Derivative transactions — Hedging transactions — Income generation transactions — Replication transactions. —

(a) The following definitions apply to this section:

(1) "Acceptable collateral" means, as to over-the-counter derivatives transactions and for the purpose of calculating counterparty exposure amounts:

(A) cash;

- (B) cash equivalents;
 - (C) letters of credit; and
 - (D) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.
- (2) "Admitted assets" means the life insurance company's assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner.
- (3) "Business entity" means:
- (A) a sole proprietorship;
 - (B) a corporation;
 - (C) a limited liability company;
 - (D) an association;
 - (E) a partnership;
 - (F) a joint stock company;
 - (G) a joint venture;
 - (H) a mutual fund;
 - (I) a trust;
 - (J) a joint tenancy; or
 - (K) another, similar form of business organization;
- whether organized for-profit or not-for-profit.
- (4) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one (1) or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.
- (5) "Cash" means any of the following:
- (A) United States denominated paper currency and coins.
 - (B) Negotiable money orders and checks.
 - (C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (6) "Cash equivalent" means any of the following:
- (A) A certificate of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (B) A banker's acceptance issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (C) A government money market mutual fund.
 - (D) A class one money market mutual fund.
- (7) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication either using the bond class one reserve factor or because it is exempt from asset valuation reserve requirements.

(8) “Collar” means two (2) derivatives transactions on the same underlying interest in which the insurer receives payments as the buyer of an option, cap, or floor in one (1) transaction and makes payments as the seller of a different option, cap, or floor in the second transaction.

(9)A. “Counterparty exposure amount” means the net amount of credit risk attributable to a derivative instrument that a life insurance company enters into with another business entity other than through a qualified exchange or a qualified foreign exchange, or cleared through a qualified clearing house (“over the counter derivative instrument”). The amount of credit risk equals:

(1) the market value of the over-the-counter derivative instrument, if the liquidation of the instrument would result in a final cash payment to the insurer; or

(2) zero (0), if the liquidation of the over-the-counter derivative instrument would not result in a final cash payment to the insurer.

B. If a life insurance company enters into one (1) or more over-the-counter derivative instruments with another business entity under a written master agreement that provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or a foreign jurisdiction listed in the “Purposes and Procedures of the Securities Valuation Office” or any successor publication as eligible for netting, the net amount of credit risk attributable to the counterparty is the greater of zero (0) or the remainder of:

(1) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer by the business entity; minus

(2) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

C. For open transactions involving over-the-counter derivative instruments, market value:

(1) shall be determined not less frequently than at the end of the most recent quarter of the insurer’s fiscal year; and

(2) shall be reduced by the market value of acceptable collateral that is:

(A) held by the insurer; or

(B) placed in escrow by one (1) or both parties.

(10) “Covered” means, in the case of a call option, that:

(A) the life insurance company owns the instrument underlying the call option it has written (a “written call”) during the entire period that the written call is outstanding; or

(B) pursuant to the exercise of options, warrants, or conversion rights already owned when the call option is written and held during the period that the written call is outstanding, the life insurance company can immediately acquire the instrument underlying the written call, if:

- (1) the price at which the underlying instrument can be acquired is less than or equal to the strike price of the written call; or
 - (2) the life insurance company has placed in escrow or, pursuant to a custodian agreement, has segregated during the entire period that the written call is outstanding, cash, cash equivalents, or securities with a market value equal to the difference between the price at which the underlying instrument can be acquired and the strike price of the written call.
- (11) "Covered" means, in the case of a put option, that the life insurance company has placed in escrow or, pursuant to a custodian agreement, has segregated during the entire period that the put option it has sold (a "written put") is outstanding, cash, cash equivalents, or securities with a market value equal to the amount of the insurer's obligation under the written put.
- (12) "Covered" means, in the case of a cap or floor, that the life insurance company holds in its portfolio, during the entire period that the cap or floor is outstanding, investments that generate sufficient cash flow to make all required payments under the cap or floor.
- (13) "Derivative instrument" means an agreement (in the nature of a bilateral contract, option, or otherwise), an instrument, or a series or combination of agreements and instruments:
- (A) to make or take delivery of, or assume or relinquish, a specified amount of one (1) or more of the interests underlying the derivative instrument, or to make a cash settlement in lieu thereof; or
 - (B) that has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one (1) or more of the interests underlying the derivative instrument.
- Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, swaptions, forwards, futures and any other agreements (in the nature of bilateral contracts, options, or otherwise) or substantially similar instruments, or any series or combination thereof, and any agreements (in the nature of bilateral contracts, options, or otherwise) or instruments permitted under rules adopted by the department.
- (14) "Derivative transaction" means a transaction involving the use of one (1) or more derivative instruments. For purposes of this section, a derivative transaction may involve a requirement that the insurer, a counterparty, or both, are required to post collateral with the other party (or a designated third party) pursuant to an agreement between the insurer and the counterparty.
- (15) "Domestic jurisdiction" means the United States, any state, territory, or possession of the United States, the District of Columbia, Canada or any province of Canada.
- (16) "Floor" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a predetermined number, sometimes called the floor rate or price,

exceeds a reference price or level or the performance or value of one or more underlying interests.

(17) "Foreign currency" means a currency other than that of a domestic jurisdiction.

(18) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(19) "Forward" means an agreement (other than a future) to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of, one (1) or more underlying interests.

(20) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of, one or more underlying interests.

(21) "Government money market mutual fund" means a money market mutual fund that at all times:

(A) invests only in obligations issued, guaranteed, or insured by the United States or collateralized repurchase agreements composed of these obligations; and

(B) qualifies for investment without a reserve pursuant to the "Purposes and Procedures of the Securities Valuation Office" or any successor publication.

(22) "Guaranteed or insured," when used in connection with an obligation acquired under this section, means that the guarantor or insurer has agreed to:

(A) perform or insure the obligation of the obligor or purchase the obligation; or

(B) be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity or sufficient liquidity to enable the obligor to pay the obligation in full.

(23) "Hedging transaction" means a derivative transaction that is entered into and maintained to manage:

(A) the risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities (or a portfolio of assets, liabilities, or assets and liabilities) that the insurer has acquired or incurred or anticipates acquiring or incurring; or

(B) currency exchange rate risk or the degree of exposure to assets or liabilities (or a portfolio of assets, liabilities, or assets and liabilities) that the insurer has acquired or incurred or anticipates acquiring or incurring.

(24) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors.

(25) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended, and a person described in Section 3(c) of the Investment Company Act of 1940.

(26) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(27) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the "Purposes and Procedures of the Securities Valuation Office" or any successor publication.

(28) "Market value" means:

(A) as to cash, cash equivalents, and letters of credit, the amounts thereof;

(B) as to a security (other than a security that is an over-the-counter derivative instrument) as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income on the security to the extent not included in the price as of that date; and

(C) as to an over-the-counter derivative instrument as of any date, the amount that a life insurance company would have to pay or would receive for entering into an over-the-counter derivative transaction on substantially identical terms with another counterparty.

(29) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(30) "Mutual fund" means:

(A) an investment company; or

(B) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(31) "Obligation" means any of the following:

(A) A bond.

(B) A note.

(C) A debenture.

(D) Any other form of evidence of debt.

(32) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend or terminate or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests.

(33) "Qualified business entity" means a business entity that is:

(A) an issuer of obligations, preferred stock, or derivative instruments that are rated 1 or 2 or are rated the equivalent of 1 or 2 by the Securities Valuation Office or by a nationally recognized statistical rating organization recognized by the Securities Valuation Office; or

(B) a primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

(34) “Qualified clearinghouse” means a clearinghouse:

- (A) that is for, and subject to the rules of, a qualified exchange or qualified foreign exchange; and
- (B) that provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the parties no longer have credit risk as to each other.

(35) “Qualified exchange” means:

- (A) a securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.), as amended;
- (B) a board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission (CFTC) or any successor of the CFTC;
- (C) Private Offerings, Resales, and Trading through Automated Linkages (PORTAL);
- (D) a designated offshore securities market as defined in Securities Exchange Commission Regulation S (17 C.F.R. Part 230), as amended; or
- (E) a qualified foreign exchange.

(36) “Qualified foreign exchange” means a foreign exchange, board of trade, or contract market located outside the United States or its territories or possessions:

- (A) that has received regulatory comparability relief under CFTC Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC’s Regulations (17 C.F.R. Part 30));
- (B) that is, or whose members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC Rule 30.10 (as set forth in Appendix C to Part 30 of the CFTC’s Regulations (17 C.F.R. Part 30)) as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or
- (C) upon which are listed foreign stock index futures contracts that are the subject of no-action relief issued by the CFTC’s Office of the General Counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this clause is a qualified foreign exchange only as to foreign stock index futures contracts that are the subject of no-action relief.

(37) “Replication transaction” means a derivative transaction that is intended to replicate the investment in one (1) or more assets that an insurer is authorized to acquire or sell under this section or section 2 of this chapter. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.

(38) “Securities Valuation Office” refers to:

- (A) the Securities Valuation Office of the National Association of Insurance Commissioners; or
- (B) any successor of the office referred to in Clause (A) established by the National Association of Insurance Commissioners.

(39) "Swap" means an agreement to exchange or to net payments at one (1) or more times based on the actual or expected price, level, performance or value of one (1) or more underlying interests.

(40) "Swaption" means an agreement giving the buyer the right (but not the obligation) to enter into a swap at a specified time in the future.

(41) "Underlying interest" means the assets, liabilities, other interests or a combination thereof underlying a derivative instrument, such as any one (1) or more securities, currencies, rates, indices, commodities or derivative instruments.

(42) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement or to facilitate divestiture of the securities of another business entity.

(b) Before a life insurance company engages in derivatives transactions, the insurer's board of directors must:

(1) adopt a written plan that specifies guidelines, systems, and objectives to be followed, such as:

(A) investment or, if applicable, underwriting objectives and risk constraints, such as credit risk limits;

(B) permissible transactions and the relationship of those transactions to the insurer's operations;

(C) internal control procedures;

(D) a system for determining whether a derivative instrument used for hedging has been effective;

(E) a credit risk management system for over-the-counter derivative transactions that measures credit risk exposure using the counterparty exposure amount; and

(F) a mechanism for reviewing and auditing compliance with the guidelines, systems, and objectives specified in the written plan; and

(2) make a determination that the insurer's investment managers have adequate professional personnel, technical expertise, and systems to implement the insurer's intended investment practices involving derivative instruments.

(c) A life insurance company may use derivative instruments under this section to engage in hedging transactions, certain income generation transactions, and certain replication transactions, as these terms may be further defined in rules adopted by the department. For each hedging and replication transaction in which it engages, a life insurance company must be able to demonstrate to the commissioner:

(1) the intended characteristics; and

(2) the ongoing effectiveness;

of the derivative transaction or combination of the derivatives transactions through appropriate analyses.

(d) A life insurance company insurer may enter into a hedging transaction under this section if, as a result of the transaction, and after giving effect to the transaction:

(1) the aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one half percent (7.5%) of the insurer's admitted assets;

(2) the aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of the insurer's admitted assets; and

(3) the aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of the insurer's admitted assets.

(e) A life insurance company may enter into the following types of income generation transactions:

(1) sales of covered call options on:

(A) non-callable fixed income securities;

(B) callable fixed income securities if the option expires by its terms before the end of the noncallable period; or

(C) derivative instruments based on fixed income securities or yields;

(2) sales of covered call options on equity securities;

(3) sales of covered puts on investments that the insurer is permitted to acquire under section 2 [IC 27-1-12-2] of this chapter; and

(4) sales of covered caps or floors;

only if, as a result of the transactions and after giving effect to the transactions, the aggregate statement value of the fixed income securities that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of the insurer's admitted assets.

(f) A life insurance company may enter into replication transactions. For the purposes of this subsection, a replication transaction is subject to the limitations and restrictions set forth in section 2 of this chapter to which the replicated investments are subject.

(g) An investment of a life insurance company that is:

(1) permitted under section 2(b)(17A) or 2(b)(17B) [IC 27-1-12-2(b)(17A) or IC 27-1-12-2(b)(17B)] of this chapter; and

(2) denominated in a foreign currency;

shall not be considered denominated in a foreign currency if the acquiring insurer enters into one (1) or more contracts permitted under this section in which the business entity counterparty agrees to exchange, or grants to the insurer the option to exchange, all payments made on the foreign currency denominated investment (or amounts equivalent to the payments that are or will be due to the insurer in accordance with the terms of such investment) for United States or Canadian dollars during the period that the contract or contracts are in effect, or other contracts with like effect, to insulate the insurer against loss caused by diminution of the value of payments owed to the insurer due to future changes in currency exchange rates.

(h) A life insurance company shall include all counterparty exposure amounts in determining compliance with the limitations set forth in section 2(b)(21) [IC 27-1-12-2(b)(21)] of this chapter.

(i) Upon the request of a life insurance company, the commissioner may approve additional transactions involving the use of derivative instruments that:

- (1) exceed the limits set forth in subsections (d), (e), and (f); or
- (2) are for other risk management purposes.

(j) A life insurance company shall maintain documentation and records relating to each derivative transaction. The documentation and records must record and include matters such as the following:

- (1) The purpose or purposes of the transaction.
- (2) The assets or liabilities to which the transaction relates.
- (3) The specific derivative instrument used in the transaction.
- (4) For collateralized derivatives transactions, a description of any collateral posted by the insurer or the counterparty, as well as records documenting any subsequent variations in the amount of the collateral.
- (5) For over-the-counter derivative transactions, the name of the counterparty and the counterparty exposure amount.
- (6) For exchange traded derivative instruments, the name of the exchange and the name of the firm that handled the trade.

(k) Each derivative instrument shall be:

- (1) traded on a qualified exchange;
- (2) entered into with, or guaranteed by, a business entity;
- (3) issued or written by or entered into with the issuer of the underlying interest on which the derivative instrument is based; or
- (4) entered into on a qualified foreign exchange.

[P.L.186-1997, § 2.]

Compiler's Notes. The reference in subsection (a)(35) to "15 U.S.C. 78 et seq." should apparently be to "15 U.S.C. 78a et seq."

27-1-12-2.4. Participation in investment pools. — (a) The following definitions apply to this section:

(1) "Admitted assets" means a life insurance company's assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(2) "Affiliate" means, as to any person, another person that, directly or indirectly, through one (1) or more intermediaries:

- (A) controls;
 - (B) is controlled by; or
 - (C) is under common control with;
- the person.

(3) "Business entity" means:

- (A) a sole proprietorship;
- (B) a corporation;
- (C) a limited liability company;

- (D) an association;
 - (E) a partnership;
 - (F) a joint stock company;
 - (G) a joint venture;
 - (H) a mutual fund;
 - (I) a trust;
 - (J) a joint tenancy; or
 - (K) another, similar form of business organization;
- whether organized for-profit or not-for-profit.
- (4) "Cash" means any of the following:
- (A) United States denominated paper currency and coins.
 - (B) Negotiable money orders and checks.
 - (C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (5) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or non-management services), or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- (6) "Fixed charges" includes interest on funded and unfunded debt, amortization of debt discount, and rentals for leased property.
- (7) "Guaranteed or insured," when used in connection with an obligation acquired under this section, means that the guarantor or insurer has agreed to:
- (A) perform or insure the obligation of the obligor or purchase the obligation; or
 - (B) be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity or sufficient liquidity to enable the obligor to pay the obligation in full.
- (8) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended, and a person described in Section 3(c) of the Investment Company Act of 1940.
- (9) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(10) "Market value" means:

(A) as to cash, cash equivalents, and letters of credit, the amounts thereof; and

(B) as to a security as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income on the security to the extent not included in the price as of that date.

(11) "Multilateral development bank" means an international development organization of which the United States is a member.

(12) "Mutual fund" means:

(A) an investment company; or

(B) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(13) "Obligation" means any of the following:

(A) A bond.

(B) A note.

(C) A debenture.

(D) Any other form of evidence of debt.

(14) "Person" means an individual, a business entity, a multilateral development bank or a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise.

(15) "Qualified bank" means a national bank, state bank, or trust company that:

(A) at all times is not less than adequately capitalized, as determined by standards adopted by United States banking regulators; and

(B) is regulated by state banking laws or is a member of the Federal Reserve System.

(16) "Series company" means an investment company that is organized as a series company, as defined in Rule 18f-2(a) adopted under the Investment Company Act of 1940 (15 U.S.C. 80a-1, as amended).

(b) In addition to the authority to participate in investment pools under section 2(b)(31) [IC 27-1-12-2(b)(31)] of this chapter, a life insurance company may participate in investment pools that:

(1) are qualified under this section; and

(2) invest only in investments that an insurer may acquire under section 2 [IC 27-1-12-2] of this chapter;

if the company's proportionate interest in the amount invested in these investments does not exceed the applicable limits of section 2 of this chapter.

(c) For an investment pool to be qualified under this section, the investment pool shall not:

(1) acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer; or

(2) borrow or incur any indebtedness for borrowed money, except for securities lending, reverse repurchase, and dollar roll transactions that

meet the requirements of section 2(b)(29) [IC 27-1-12-2(b)(29)] of this chapter.

(d) A life insurance company shall not participate in an investment pool qualified under this section if, as a result of the participation and after giving effect to the participation, the aggregate amount of participation then held by the insurer in all investment pools under this section and under section 2(b) (31) of this chapter would exceed thirty-five percent (35%) of the admitted assets of the insurer.

(e) For an investment pool to be qualified under this section:

(1) the manager of the investment pool:

(A) must be organized under the laws of the United States, a state or territory of the United States, or the District of Columbia;

(B) must be designated as the pool manager in a pooling agreement; and

(C) must be:

(i) the insurer;

(ii) an affiliated insurer;

(iii) a business entity affiliated with the insurer;

(iv) a qualified bank; or

(v) a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. 80a-1 et seq.);

(2) the pool manager or an entity of the type referred to in subdivision (1)(C) that is designated by the pool manager must compile and maintain detailed accounting records setting forth:

(A) the cash receipts and disbursements reflecting each participant's proportionate participation in the investment pool;

(B) a complete description of all underlying assets of the investment pool (including the amount, interest rate, maturity date (if any) and other appropriate designations); and

(C) other records that, on a daily basis, allow third parties to verify each participant's interest in the investment pool; and

(3) the assets of the investment pool must be held in one (1) or more accounts, in the name of or on behalf of the investment pool, in a qualified bank under a custody agreement or trust agreement that:

(A) states and recognizes the claims and rights of each participant;

(B) acknowledges that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of the participant's participation in the investment pool; and

(C) contains an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the qualified bank or the assets of any other person.

(f) The pooling agreement for an investment pool that is qualified under this section must be in writing and must provide the following:

(1) Insurers, subsidiaries, or affiliates of insurers holding interests in the pool, or any pension or profit sharing plan of the insurers or their subsidiaries or affiliates, must at all times hold one hundred percent (100%) of the interests in the investment pool.

- (2) The underlying assets of the investment pool must not be commingled with the general assets of the pool manager or any other person.
- (3) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
 - (A) each participant owns an undivided interest in the underlying assets of the investment pool; and
 - (B) the underlying assets of the investment pool are held solely for the benefit of each participant.
- (4) A participant or (in the event of the participant's insolvency, bankruptcy, or receivership) its trustee, receiver, or other successor-in-interest may withdraw all or any portion of its participation from the investment pool under the terms of the pooling agreement.
- (5) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter. Payments upon withdrawals under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide for such payments to be made to the participants in one (1) of the following forms, at the discretion of the pool manager:
 - (A) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
 - (B) in kind, a pro rata share of each underlying asset; or
 - (C) in a combination of cash and in kind distributions, a pro rata share in each underlying asset.
- (6) The records of the investment pool shall be made available for inspection by the commissioner. [P.L.186-1997, § 3.]

27-1-12-2.5. Limitations on investments — Exceptions — Investments in open-end diversified management companies — “Pension contracts” defined. — (a) A domestic life insurance company, which has a segregated account or accounts in relation to contracts to which class 1(c) of IC 27-1-5-1 applies, is governed as to its investment of assets by the investment limitations of section 2 [IC 27-1-12-2] of this chapter with the following exceptions:

- (1) the limitations prescribed in paragraph 22 of section 2(b) [IC 27-1-12-2(b)] of this chapter are not applicable to investments in relation to such segregated account or accounts;
- (2) investments under paragraph 20 of section 2(b) of this chapter are solely limited to ten percent (10%) of the assets of such segregated account; and
- (3) the limitations in sections 2 and 3 [IC 27-1-12-2 and IC 27-1-12-3] of this chapter do not apply with regard to contributions, premiums, or considerations made by holders of pension contracts issued by a domestic life insurance company, which has net assets of at least twenty-five million dollars (\$25,000,000) at the end of the preceding calendar year and which has allocated such contributions, premiums, or considerations to a segregated investment account or accounts.

(b) Nothing in section 2 of this chapter or this section prohibits the investment of all assets of a segregated account or accounts in any open-end diversified management company registered under the federal Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(c) Pension contracts for the purposes of subsection (a)(3) means contracts to which both class 1(c) of IC 27-1-5-1 applies and which are issued in connection with a plan or other arrangement described in section 3(a)(2) of the Securities Act of 1933, (15 U.S.C. 77c(a)(2)). The term also includes agreements reinsuring other insurers' contracts which were issued in connection with plans or other arrangements described in 15 U.S.C. 77c(a)(2). [IC 27-1-12-2.5, as added by Acts 1981, P.L. 236, § 2; P.L.186-1997, § 4.]

27-1-12-3. Real estate. — Any domestic life insurance company shall have power to acquire, hold and convey real estate as described below, and no other:

1. The building in which it has its principal office and the land on which it stands;
2. Such as shall be necessary for the convenient transaction of its business;
3. Such as shall have been acquired for the accommodation of its business;
4. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due;
5. Such as shall have been conveyed to it in connection with its investments in real estate contracts or its investments in real estate under lease or for the purpose of leasing or developing in accordance with paragraph 8 of section 2 of this chapter or such as shall have been acquired for the purpose of investment under paragraph 20 of section 2(b) [IC 27-1-12-2(b)] of this chapter. Any real estate acquired under paragraph 20 of section 2(b) of this chapter shall be evaluated for statement purposes in a manner satisfactory to the department.
6. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or in exchange for real estate so conveyed to it; and
7. Such as it shall have purchased at sales on judgments, decrees or mortgages obtained or made for such debts.

All such real estate specified in paragraphs (3), (4), (5), (6), and (7) of this section, which shall not be necessary for the convenient transaction of its business, and which is not held under paragraphs 7, 8 or 20 of section 2(b) of this chapter, shall be sold by the life insurance company and disposed of within ten (10) years after it shall have acquired the title to same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business, unless the company procures the certificate of the commissioner that its interests will suffer materially by a forced sale thereof, in which event the time for the sale may be extended to such time as the commissioner shall direct in such certificate. [Acts 1935, ch. 162, § 148, p. 588; 1945, ch. 175, § 2, p. 420; 1951, ch. 24, § 1; 1981, P.L. 236, § 3; P.L.186-1997, § 5.]

27-1-12-3.5. Intangible assets attributed to investment in subsidiary. — Goodwill, trade names, and other like intangible assets attributable to any investment in a subsidiary shall be admitted as assets except:

- (1) To the extent that the aggregate amount thereof exceeds ten percent (10%) of the capital and surplus of the insurer as reported in its latest annual report filed with the commissioner;
- (2) To the extent that any such asset is not being amortized ratably over a period of ten (10) years or less from the date of acquisition; and
- (3) In determining the financial condition or solvency of an insurer under IC 27-9. [P.L.160-1986, § 1.]

27-1-12-4. Amortization. — (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or, instead of this method, according to an accepted method of valuation approved by the department. The purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of the securities. The department shall have full discretion in determining the method of calculating values according to the rules set forth in this subsection. However, no such method or valuation under this subsection may be inconsistent with any applicable method or valuation used by insurers in general or any such method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

(b) Securities held by an insurer, other than those referred to in subsection (a), shall be valued, in the discretion of the department, at their market value or at their appraised value or at prices determined by the department as representing the fair market value of the securities. Preferred or guaranteed stocks or shares, while paying full dividends, may be carried at a fixed value in lieu of market value at the discretion of the department and in accordance with the method of valuation that the department approves. No valuation under this subsection may be inconsistent with any applicable valuation or method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization. [Acts 1935, ch. 162, § 150, p. 588; P.L.116-1994, § 21; P.L.130-1994, § 16.]

27-1-12-5. Required provisions for life policies issued after July 1, 1935, and before a date not later than January 1, 1948. — (a) No policy of life insurance, other than industrial insurance, group life insurance, or reinsurance, bearing a date of issue not earlier than July 1, 1935, nor later than a transition date to be selected by the company pursuant to section 12 [IC 27-1-12-12] of this chapter, such transition date in no event to be later than January 1, 1948, shall be delivered or issued for delivery in this state or issued by a company organized under the laws of this state unless the same shall provide the following:

(1) That all premiums shall be payable in advance, either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one (1) or more of the officers who shall be designated in the policy.

(2) For a grace of not less than thirty (30) days for the payment of every premium after the first premium, which may be subject to an interest charge, during which period the insurance shall continue in force; Provided, That if the insured shall die within such period of grace the unpaid premium for the current policy year may be deducted in any settlement under the policy.

(3) That the policy, together with the application therefor, a copy of which application shall be attached to the policy and made a part thereof, shall constitute the entire contract between the parties and shall be incontestable after it shall have been in force during the lifetime of the insured for two (2) years from its date, or, at the option of the company after it shall have been in force for two (2) years from its date, except for nonpayment of premiums, and except for violation of the conditions of the policy relating to naval and military service in time of war, and at the option of the company provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted.

(4) That if the age of the insured and/or the beneficiary, if that age enters into the determination of the premiums charged or benefits promised, has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age of the insured and/or beneficiary.

(5) That all statements made by the insured in the application shall, in the absence of fraud, be deemed representations and not warranties.

(6) That, in the case of participating policies, the policy shall participate in the surplus of the company as apportioned by the board of directors of the company, and that, beginning not later than the end of the fifth policy year, the company will determine and account for the portion of the divisible surplus so ascertained accruing on the policy, and that the owner of the policy shall have the right to have the current dividends arising from such participation paid in cash, and that at periods of not more than five (5) years, such accounting and payment at the option of the policyholder shall be had. The owner of the policy may elect to take any of the other dividend options in the policy. If the owner of the policy shall not elect any of the other dividend options provided in the policy, the apportioned dividends shall be held to the credit of the policy and be payable in cash at maturity of the policy or be withdrawable in cash at an anniversary of its date; Provided, however, If the policy shall contain a provision for an apportionment of the surplus at the end of the first policy year and annually thereafter, then and in that event said policy may provide that each dividend shall be paid subject to the payment of the premium of the next ensuing year.

(7) A table showing in figures the loan values and the cash, paid-up and extended insurance options upon surrender, or available under the

policy each year, upon default in premium payment during at least the first twenty (20) years of the policy, beginning at the end of the third policy year, which values shall be equal to the full reserve on the policy, except the reserve for permanent mental or physical disability, or for accidental death, and/or other supplemental benefits, less not to exceed two and one-half percent ($2\frac{1}{2}\%$) of the sum insured; following this table there shall be a clause specifying the mortality table and rate of interest adopted for computing the reserve and specifying the basis for the values and options after the period covered by the table. The provisions of this subdivision shall not apply to term policies nor to any form of paid-up insurance issued or granted in exchange for lapsed or surrendered policies.

(8) Policies issued by companies doing business in this state may provide for not more than one (1) year preliminary term insurance by incorporating therein the following clause immediately following the table of options and statement of basis therefor, as provided for in subdivision (7): "The first year's insurance under this policy is term insurance, purchased by the whole or part of the premium to be received during the first policy year and the policy shall be valued according to its terms and the laws of the state of Indiana".

(9) That after three (3) full years' premiums shall have been paid, the company, at any time while the policy is in force, will loan, on the execution of a proper assignment of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the insured, less than the amount stated in the table of options to be loaned at the end of the current policy year plus the value of the reserve on any dividend additions to the policy, and that the company will deduct from such loan value any existing indebtedness on or secured by the policy and any unpaid balance of the premiums for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, and may further provide that such loan may be deferred for not exceeding six (6) months after the application therefor is made. It shall be further stipulated in the policy that failure to repay any such loan or pay interest thereon shall not void the policy unless such total indebtedness to the company shall equal or exceed such loan value at the time of such failure, nor until thirty (30) days after notice shall have been mailed by the company to the last known address of the insured and to the assignee, if any, if such assignee has notified the company of his address. No condition other than as provided in this subdivision shall be exacted as a prerequisite to any such loan. The provisions of this subdivision shall not be required in term policies nor shall they apply to paid-up insurance issued or granted in exchange for lapsed or surrendered policies.

(10) That in the event of default of premium payment after premiums have been paid for not less than three (3) years, the insured shall be entitled to the extended insurance shown in the table of values and options for the end of the last year for which full annual premiums shall have been paid; Provided, That if there be any unpaid note given for a

premium or any indebtedness to the company on account of or secured by the policy, the amount of extended insurance shall be reduced in the ratio of such indebtedness to the net value of such extended insurance, or the amount of such indebtedness shall be deducted from the net value of the extended insurance otherwise available and the balance shall be applied as a net single premium to purchase extended insurance for an amount equal either to the face of the policy or to the face of the policy less the amount of such indebtedness; and Provided further, That the policy may be surrendered to the company at its home office within one (1) month from the due date of the unpaid premium for a specified cash value at least equal to the sum which would otherwise be available for the purchase of extended insurance as provided in this subdivision; and Provided further, That the company may defer payment for not more than six (6) months after the application therefor is made. The provisions of this subdivision shall not be required in term insurance of twenty (20) years or less.

(11) That, should there have been default in premium payment, and the value of the policy applied to the extension of the insurance, and such insurance be in force and the original policy not surrendered to the company and cancelled, the policy may be reinstated within three (3) years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.

(12) That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and of the interest of the claimant and not later than two (2) months after receipt of such proof.

(13) A title on the face and on the back of the policy describing the same.

(b) Any of the provisions of subsection (a) not applicable to single premium policies shall to that extent not be incorporated therein. The provisions of subsection (a) shall not apply to policies issued on substandard, underaverage, or impaired risks. Any policy may be issued or delivered in this state which in the opinion of the department contains provisions on any one (1) or more of the several requirements of subsection (a) more favorable to the policyholder than those required in subsection (a). [Acts 1935, ch. 162, § 151, p. 588; 1943, ch. 189, § 1, p. 562; P.L.252-1985, § 60.]

Indiana Law Journal. Clauses Excluding Aviation Injury and Death as Risks Not As-

sumed in Life or Accident Insurance Policy, 10 Ind. L. J. 286.

NOTES TO DECISIONS

ANALYSIS

In general.
Applicability.
Construction and validity.
Default in payment of premium.
—In general.
—Construction and validity.
—Extended insurance.
Extended insurance.

Loans on policy.
—In general.
—Construction and validity.
—Default in payment.
—Note accepted for premium.
—Options of insured.
—Suit on policy.
—Surrender of policy.
Payment.

—Proof of death.
 Policy and application as entire contract.
 —In general.
 —Incontestability clause.
 —Military clause.
 Representations.
 Reserve.
 Statements deemed representations and not warranties.
 Tender of premiums.
 Warranties.

In General.

An insured, when entering into the contract of insurance, was required to exercise the ordinary care and prudence that was required in other business transactions. *Metropolitan Life Ins. Co. v. Alterovitz*, 214 Ind. 186, 14 N.E.2d 570, 117 A.L.R. 770 (1938).

In action on a life policy, where the insurer objected to certain instructions presenting two conflicting theories as to the effect of the agent's knowledge and the statutory requirement to attach a copy of the application to the policy, the giving of the instructions constituted reversible error. *Metropolitan Life Ins. Co. v. Alterovitz*, 214 Ind. 186, 14 N.E.2d 570, 117 A.L.R. 770 (1938).

Applicability.

Acts 1909, ch. 95, § 5, was not applicable to companies doing business on the assessment plan. *Western Life Indem. Co. v. Bartlett*, 84 Ind. App. 589, 145 N.E. 786 (1924).

Decisions under policies issued before July 1, 1909 did not control as to matters covered prior to Acts 1909, ch. 95, § 5. *Federal Life Ins. Co. v. Relias*, 99 Ind. App. 115, 185 N.E. 319 (1933).

Construction and Validity.

A stipulation in a life policy exempting the company from liability for death of insured within a specified time if caused by certain diseases was valid. *Kentucky Cent. Life & Accident Ins. Co. v. White*, 106 Ind. App. 530, 19 N.E.2d 872 (1939).

Life insurance policy and loan agreements contemplated thereby and subsidiary thereto were governed by Indiana statutes, though issued by Massachusetts insurance company, and notwithstanding recitals that Massachusetts laws should govern. *New Eng. Mut. Life Ins. Co. v. Olin*, 114 F.2d 131 (7th Cir. 1940), cert. denied, 312 U.S. 686, 61 S. Ct. 612, 85 L. Ed. 1123 (1941).

When a policy is capable of two reasonable constructions, that interpretation will be adopted that is most favorable to the insured and against the insurer. *Atkinson v. Indiana Nat'l Life Ins. Co.*, 194 Ind. 563, 143 N.E. 629 (1924).

In an action on a life insurance contract, the interpretation thereof is for the court. *Federal*

Life Ins. Co. v. Sayre, 195 Ind. 7, 142 N.E. 223 (1924).

While it is true that where there is doubt and ambiguity as to the meaning of insurance contracts the preparation of which is under the control of the company, they are to be construed most strongly against the company, this rule does not apply as to those provisions in a contract of insurance inserted by reason of a statutory mandate, since such provisions being in derogation of the common law right to freely contract are to be strictly construed. *Guardian Life Ins. Co. v. Barry*, 213 Ind. 56, 10 N.E.2d 614 (1937).

When the provisions of the policy are as favorable to the insured and to appellant as the statute, and contain the substantial provisions of the statute, its terms will determine the rights of the parties. *Waddell v. New Eng. Mut. Life Ins. Co.*, 83 Ind. App. 209, 147 N.E. 816 (1924).

Default in Payment of Premium.

—In General.

Policies may be forfeited for a failure to pay premiums when due. *Franklin Life Ins. Co. v. Sefton*, 53 Ind. 380 (1876); *Willcuts v. Northwestern Mut. Life Ins. Co.*, 81 Ind. 300 (1882); *Continental Ins. Co. v. Dorman*, 125 Ind. 189, 25 N.E. 213 (1890); *Meyer v. Manhattan Life Ins. Co.*, 144 Ind. 439, 43 N.E. 448 (1896); *Forbes v. Union Cent. Life Ins. Co.*, 151 Ind. 89, 51 N.E. 84 (1898); *Tibbits v. Mutual Benefit Life Ins. Co.*, 159 Ind. 671, 65 N.E. 1033 (1903).

A provision in an insurance policy providing for a forfeiture of the policy for failure to pay the premium was for the benefit of the insurer and could be waived by it. *Michigan Mut. Life Ins. Co. v. Custer*, 128 Ind. 25, 27 N.E. 124 (1891).

A provision in an insurance policy that the insurer was not liable for a loss while a note given for a premium was overdue and unpaid was valid. *Michigan Mut. Life Ins. Co. v. Custer*, 128 Ind. 25, 27 N.E. 124 (1891).

A general agent had the power to orally agree to an extension of time of payment of dues even when the policy would be avoided for failure to make the payment within the time limit unless the extension was granted. *Painter v. Industrial Life Ass'n*, 131 Ind. 68, 30 N.E. 876 (1892).

A broker who was employed to procure a policy of insurance on property and who caused a policy to be issued and delivered to the owner who paid the required premium to the broker was liable to the owner for damages caused by loss by fire where the broker failed to pay the premium to the company and the evidence showed the broker was an agent of the owner and not of the company. *Criswell v. Riley*, 5 Ind. App. 496, 30 N.E. 1101 (1892).

Default in Payment of Premium. (Cont'd)

—In General. (Cont'd)

If an insurance company, with knowledge of a loss, accepted a premium, it waived the forfeiture and restored the policy to its full force and effect from the beginning. *Continental Ins. Co. v. Chew*, 11 Ind. App. 330, 38 N.E. 417, 54 Am. St. R. 506 (1894).

It was immaterial whether a premium was paid in cash or whether a credit was given where there was no stipulation in the policy that the contract would be void upon failure to pay the premium in cash or to give a note for the same thus the failure of the insured to pay the premium within a definite and fixed time did not work a forfeiture of the policy. *Ohio Farmers Ins. Co. v. Stowman*, 16 Ind. App. 205, 44 N.E. 558 (1896).

Acceptance of delinquent premium by an insurance company director the day after a fire with knowledge of the loss, where the company retained the premium, waived a forfeiture of the policy on account of the delinquency. *Marshall Farmers Home Ins. Co. v. Liggett*, 16 Ind. App. 598, 45 N.E. 1062 (1897).

An insurance company, by enforcing collection of notes not due at the time of cancellation of a policy which provided that the company could elect to cancel the policy upon failure to pay any premium not at maturity and that upon cancellation all premium notes not then due would be surrendered to the insured, waived the forfeiture. *Union Cent. Life Ins. Co. v. Jones*, 17 Ind. App. 592, 47 N.E. 342 (1897).

An insurance company could orally waive the condition of a policy which required payment of the premium in advance since the condition that the premium be paid in advance was for the benefit of the company and could be waived by it. *Prudential Ins. Co. v. Sullivan*, 27 Ind. App. 30, 59 N.E. 873 (1901).

The right to a paid-up policy was lost by inexcusable delay where by the terms of the policy it was forfeited upon the failure of the insured to pay an annual premium when due, but provided he could within six months after the default surrender the policy and receive a paid-up policy for a stated amount, and he failed to surrender the policy within the six month period. *Wells v. Vermont Life Ins. Co.*, 28 Ind. App. 620, 62 N.E. 501 (1902).

Failure to pay an assessment by a fraternal insurance company operated as a forfeiture of membership and barred recovery on a life insurance policy and no affirmative action on the part of the lodge to suspend the delinquent member was required. *Grand Lodge A.O.U.W. v. Marshall*, 31 Ind. App. 534, 68 N.E. 605, 99 Am. St. R. 273 (1903).

A provision in a fire insurance policy that it

should be void if the premium or assessment was not paid on or before a certain day was self-executing. *Farmers Ins. Ass'n v. Males*, 82 Ind. App. 172, 145 N.E. 446 (1924).

The payment of a delinquent premium after a fire to an authorized bank in the building where the fire occurred without informing the bank the payment was delinquent or offering to pay the penalty did not waive the forfeiture for failure to pay the premium when due. *Farmers Ins. Ass'n v. Males*, 82 Ind. App. 172, 145 N.E. 446 (1924).

—Construction and Validity.

Indiana nonforfeiture statute which provided certain protection for the insured in case of forfeiture for default in payment of premiums formed a part of all life insurance policies "issued or delivered" in Indiana. *New Eng. Mut. Life Ins. Co. v. Olin*, 114 F.2d 131 (7th Cir. 1940), cert. denied, 312 U.S. 686, 61 S. Ct. 612, 85 L. Ed. 1123 (1941).

The provision of a life policy that any indebtedness of the insured to the insurer at the time of the surrender of the policy or default in payment of premium, should be used to reduce the amount of extended insurance provided for in the policy, and not the term, was not in conflict with § 5(10) of Acts 1909, ch. 95, under the facts presented, but was such as the parties had a right to incorporate in the life insurance contract. *Metropolitan Life Ins. Co. v. Winiger*, 215 Ind. 120, 17 N.E.2d 86 (1938).

Where under § 5(10) of ch. 95, Acts 1909, an insured accepted a life policy in which the insurer elected to use any indebtedness of the insured to the insurer, at the time he made default in payment of a premium, for reducing the amount of extended insurance, and not the term, both the insurer and the insured were circumscribed in their rights by the provisions of the policy. *Metropolitan Life Ins. Co. v. Winiger*, 215 Ind. 120, 17 N.E.2d 86 (1938).

This clause was a part of every life policy whether incorporated therein or not. *Equitable Life Ins. Co. v. Horner*, 97 Ind. App. 347, 182 N.E. 463 (1932).

In case of default by nonpayment of premium of a life policy, which had been in force for more than 3 years after the date of insurance, without election by the insured as between options, the policy was required to be continued as extended insurance. *Equitable Life Ins. Co. v. Taylor*, 106 Ind. App. 508, 17 N.E.2d 851 (1938).

Clause 10 should have been read into a life policy in case of default on failure to pay premiums where the policy had been in effect for not less than 3 years. *Equitable Life Ins. Co. v. Taylor*, 106 Ind. App. 508, 17 N.E.2d 851 (1938).

The purpose of the statutory notice regard-

Default in Payment of Premium. (Cont'd)**—Construction and Validity.** (Cont'd)

ing the payment of insurance premiums is to prevent a forfeiture of the policy for nonpayment of premiums when due, because of inadvertence and forgetfulness. *Lincoln Nat'l Life Ins. Co. v. Sobel*, 110 Ind. App. 331, 35 N.E.2d 121 (1941).

—Extended Insurance.

Indiana nonforfeiture statute, which provided certain protection for the insured in case of forfeiture for default in payment of premiums, did not permit indebtedness to reduce both the amount and term of extended insurance. *New Eng. Mut. Life Ins. Co. v. Olin*, 114 F.2d 131 (7th Cir. 1940), cert. denied, 312 U.S. 686, 61 S. Ct. 612, 85 L. Ed. 1123 (1941).

The insured was entitled to extended insurance for the face amount of the policy, including any additions, "less any indebtedness hereon or secured hereby." *Waddell v. New Eng. Mut. Life Ins. Co.*, 83 Ind. App. 209, 147 N.E. 816 (1924).

Where the policy provided that the insured was entitled to extended insurance for the face amount of the policy, including any additions, "less any indebtedness hereon or secured hereby," it was error to deduct the existing indebtedness from the cash value in determining the term of extended insurance. *Waddell v. New Eng. Mut. Life Ins. Co.*, 83 Ind. App. 209, 147 N.E. 816 (1924).

This clause, requiring every life policy to provide for extended term insurance on insured's default after three years' payment, automatically entitled insured to such insurance, notwithstanding his noncompliance with the policy provision requiring him to exercise the option for extended insurance. *Equitable Life Ins. Co. v. Horner*, 97 Ind. App. 347, 182 N.E. 463 (1932).

The making of a loan by the insurer on a lapsed life policy, to the amount of its cash surrender value, did not have the effect of forfeiting the extended insurance on default in payment of premium on policy which had been in effect for 3 years or more. *Equitable Life Ins. Co. v. Taylor*, 106 Ind. App. 508, 17 N.E.2d 851 (1938).

In action on life policy, where it was stipulated by the parties that the net value of the extended insurance was a certain sum, such amount was the correct figure which the trial court should have used in determining the amount of money available for the purchase of extended insurance, after subtracting the indebtedness due on the policy. *State Life Ins. Co. v. McNeese*, 106 Ind. App. 378, 19 N.E.2d 854 (1939).

It was not necessary, under Acts 1909, ch. 95, § 5, that the net value of extended insurance be the same as the cash or loan value of the policy at a given time. *State Life Ins. Co. v. McNeese*, 106 Ind. App. 378, 19 N.E.2d 854 (1939).

If the provisions of a life policy pertaining to cash or loan value and the value as to extended insurance were not ambiguous, and if they carried the same meaning to an informed business man and to an expert technician, they were to be enforced in accordance with their letter. *State Life Ins. Co. v. McNeese*, 106 Ind. App. 378, 19 N.E.2d 854 (1939).

Extended Insurance.

Where a life policy was dated October 5, 1930, this being the last possible date that premium rates for age 52 could apply to insured, and he failed to pay premium which fell due in October, 1934, at which time he was entitled to extended insurance for four years and four months, such extended insurance terminated at the end of the day of February 4, 1939, and the policy was not in effect on February 5, the date of insured's death, notwithstanding assured had been informed by a letter received from the insurer that his insurance would be in force to February 5, 1939. *American Nat'l Bank v. Service Life Ins. Co.*, 120 F.2d 579, 137 A.L.R. 1148 (7th Cir.), cert. denied, 314 U.S. 654, 62 S. Ct. 104, 86 L. Ed. 524 (1941).

Where the insurer elected to deduct the amount of the indebtedness from the net value of the extended insurance, and the insurer credited the insured with a certain extended term, to which she was entitled under the policy, such procedure was not in conflict with the statute. *Life Ins. Co. v. Sluss*, 105 Ind. App. 274, 11 N.E.2d 500 (1937).

Where a life policy lapsed for nonpayment of premiums and under the terms of the policy the insured had the choice of three options but failed to elect under which option she would take, she automatically became entitled to extended insurance, which was one of the options given in the policy, and in computing the amount available for purchasing extended insurance the insurer had the right to deduct the amount of an unpaid debt secured by the policy. *Life Ins. Co. v. Sluss*, 105 Ind. App. 274, 11 N.E.2d 500 (1937).

Where the insured in a life policy, upon the lapse of the policy after the premiums on the policy had been paid for three full years, failed to avail herself of options provided by the policy, one of which was to give the insured extended insurance, the insured automatically became entitled to such extension of the policy. *Life Ins. Co. v. Sluss*, 105 Ind. App. 274, 11 N.E.2d 500 (1937).

Loans on Policy.

—In General.

Where a loan by an insurance company to the insured, together with accrued interest on the loan, exceeded the legal reserve value of the policy, the failure of insured to pay accrued interest when the same became due after the insured's indebtedness to the company exceeded the legal reserve was ground for terminating the policy. *Reserve Loan Life Ins. Co. v. Brammer*, 83 Ind. App. 584, 146 N.E. 876 (1925).

Where the holder of a life policy obtained a loan from the insurer for the full amount of the cash surrender value of the policy, such transaction was independent of the insurance contract, except that the equity of the insured under the policy was held by the insurer as collateral security for payment of the loan. *Equitable Life Ins. Co. v. Taylor*, 106 Ind. App. 508, 17 N.E.2d 851 (1938).

—Construction and Validity.

Values based on the American Experience Table of Mortality could safely be used to determine whether the provision in a life insurance policy that policy indebtedness might be used to reduce both the amount and term of extended insurance upon default of insured as carefully safeguarded the policy holders as a statute which provided that policy indebtedness might be used to reduce either the amount or term of extended insurance, but not both. *Gallagher v. Mutual Life Ins. Co.*, 219 Ind. 35, 36 N.E.2d 780 (1941).

In determining the question as to whether a provision in a life insurance policy that policy indebtedness could be said to reduce both the amount and term of extended insurance upon default of insured was valid, the test was not whether such provision was in exact or substantial compliance with a statute which provided that the indebtedness could be used to reduce either the amount or term of extended insurance, but not both, but the test was whether the provision as carefully safeguarded the policyholders as did the statute. *Gallagher v. Mutual Life Ins. Co.*, 219 Ind. 35, 36 N.E.2d 780 (1941).

Where a loan was made on a life insurance policy while the policy was still in force during its period of grace, the proceeds being used to pay a premium and interest on a prior loan, for which prior loan the policy had been previously assigned to the company, such loan was not a new transaction outside and independent of the insurance contract, although the policy was not again assigned, but the whole amount was "indebtedness on the policy" or "indebtedness on amount of or secured by the policy," and was deductible to arrive at the net cash value under the policy and the

net reserve under the statutes. *Gallagher v. Mutual Life Ins. Co.*, 219 Ind. 35, 36 N.E.2d 780 (1941).

Where an insurance company voluntarily included in a policy insuring a substandard risk a provision required by statute that life insurance policies should provide that they should not become void for failure to pay loans or interest unless the indebtedness equaled or exceeded the loan value, nor until 30 days after notice has been mailed to the insured, although the statute specifically exempted the insurer from inserting such provision in the case where a substandard risk was insured, the insurance company should not have been penalized, in construing such provision, by the general rule that when insurance contracts were so drawn by the company as to be ambiguous, and subject to different reasonable interpretations, courts would adopt that construction most favorable to the insured, since the ambiguity of the provision, substantially in the language of the statute, was created not by the insurer but by the legislature. *Lincoln Nat'l Life Ins. Co. v. Sobel*, 110 Ind. App. 331, 35 N.E.2d 121 (1941).

Where a provision in a life insurance policy providing for the use of indebtedness on account of the policy to reduce both the term and amount of extended insurance upon default in the payment of premiums safeguarded the policyholder as carefully as did the laws of the state, such provision was valid. *Garrett v. Northwestern Mut. Life Ins. Co.*, 111 Ind. App. 515, 38 N.E.2d 874 (1942).

Where, under the terms of a life insurance policy, insured was entitled to have his application for a policy loan granted as a matter of right, the indebtedness created by such loan was not only "secured by" the policy, but was also "on account of the policy," within the provisions of the statute permitting the insurance company, upon default in the payment of premiums, to contract for the reduction of the amount or term of extended insurance by deducting any existing indebtedness to the company on account of or secured by the policy. *Garrett v. Northwestern Mut. Life Ins. Co.*, 111 Ind. App. 515, 38 N.E.2d 874 (1942).

The phrase "on account of the policy," as used in a life insurance policy and as used in the statute permitting the insurance company, upon default in the payment of premiums, to contract for the reduction of the amount or term of extended insurance by deducting any existing indebtedness to the company on account of or secured by the policy, meant "on account of the terms of the policy," or "by reason of the terms of the policy." *Garrett v. Northwestern Mut. Life Ins. Co.*, 111 Ind. App. 515, 38 N.E.2d 874 (1942).

Loans on Policy. (Cont'd)**—Default in Payment.**

A compliance with the statute requiring that a life insurance policy contain a provision that the policy should not become void for failure to pay a loan or interest unless the indebtedness equaled or exceeded the loan value, nor until 30 days after notice had been mailed to the insured, was met by giving notice 30 days prior to the date on which the cash value and the indebtedness became equal, and where such notice provision was voluntarily included in the policy insuring a substandard risk, although not required by statute in such case, no different rule of interpretation of the provision, which was substantially in the language of the statute, was required. *Lincoln Nat'l Life Ins. Co. v. Sobel*, 110 Ind. App. 331, 35 N.E.2d 121 (1941).

Under a provision of a policy of life insurance that the failure to pay any policy loan, automatic premium loan, or interest thereon should not avoid the policy unless the total indebtedness equaled or exceeded the cash surrender value, and in no event until 30 days after notice thereof had been mailed to insured or assignee, a notice that the policy would terminate 30 days later because the indebtedness would then equal the cash value was sufficient both under the policy and under the statute without the giving of notice after the date specified for the lapse of the policy. *Lincoln Nat'l Life Ins. Co. v. Sobel*, 110 Ind. App. 331, 35 N.E.2d 121 (1941).

Where a life insurance policy provided that the amount to be used for extended insurance upon default in the payment of premiums was to be calculated by deducting existing indebtedness on account of the policy, it was the intent of such policy and the applicable statute that interest on any loan be determined to the date of the default and a complete balance on account of the policy be made in finding the amount available to purchase extended insurance, and the insurer properly deducted all interest on the loan to the date of default, including interest which was not yet due. *Garrett v. Northwestern Mut. Life Ins. Co.*, 111 Ind. App. 515, 38 N.E.2d 874 (1942).

—Note Accepted for Premium.

Acceptance by life insurance company of interest bearing notes as part of first year's premium, with agreement that policy would be "forfeited and void" if each note was not duly paid, did not violate Acts 1909, ch. 95, § 5, and such agreement was valid and enforceable. *New Eng. Mut. Life Ins. Co. v. Brooks*, 77 Ind. App. 98, 127 N.E. 17 (1920).

—Options of Insured.

Where a life insurance policy provided for

use of policy indebtedness to reduce both the amount and term of extended insurance upon default of insured, instead of providing for using such indebtedness to reduce either the amount or term of extended insurance, but not both, if the two statutory methods and the policy method were three options on the part of insured's beneficiary, it would not do to await the death of the insured and then determine which of the three methods would give his beneficiary the largest sum, since the comparative values must be determined as of the date the policy lapsed, and could not be permitted to abide the choice of the beneficiary after the uncertain event of the insured's death had been made certain. *Gallagher v. Mutual Life Ins. Co.*, 219 Ind. 35, 36 N.E.2d 780 (1941).

—Suit on Policy.

Where the beneficiaries under a life policy received from the insurer only a portion of what was due them under the policy, on representations made by the insurer that that was all they were entitled to, the beneficiaries could maintain an action to recover the balance due under the policy, without making offer to return the amount received by them. *Equitable Life Ins. Co. v. Taylor*, 106 Ind. App. 508, 17 N.E.2d 851 (1938).

Where, in an action on a life insurance policy which provided that upon default in the payment of premiums the amount or term of extended insurance should be reduced by deducting existing indebtedness to the company, the court did not find specifically that a policy loan was "on account of" the policy, but the primary facts as found necessitated an inference of the ultimate fact that the loan was made "on account of the policy," such ultimate fact was treated as found. *Garrett v. Northwestern Mut. Life Ins. Co.*, 111 Ind. App. 515, 38 N.E.2d 874 (1942).

—Surrender of Policy.

A letter by insured stating that he elected to pay no further premiums and desired a payment of cash surrender value without actual surrender of the policy was insufficient. *Reserve Loan Life Ins. Co. v. Sumner*, 70 Ind. App. 472, 123 N.E. 443 (1919).

Payment.**—Proof of Death.**

This section did not apply to a policy for \$500, with double indemnity for accidental death. *Western & S. Life Ins. Co. v. Kerger*, 111 Ind. App. 297, 36 N.E.2d 965 (1941).

In an action on a life insurance policy for \$500, with double indemnity for accidental death, an instruction which stated that, in the event of a verdict for plaintiff, interest might be computed at the rate of six percent per annum from the expiration of two months

Payment. (Cont'd)**—Proof of Death. (Cont'd)**

from the proof of death was erroneous, but since it only contributed to the amount of recovery, the error was cured by remittitur filed by plaintiff. *Western & S. Life Ins. Co. v. Kerger*, 111 Ind. App. 297, 36 N.E.2d 965 (1941).

Policy and Application as Entire Contract.**—In General.**

Acts 1909, ch. 95, was passed for the good of both the insurer and the insured, and protected the insured by giving him the opportunity of examining the application when it was returned, to ascertain if his answers were correctly written pursuant to the answers made by him, and it protected the insurer from paying unjust and fraudulent claims. *Metropolitan Life Ins. Co. v. Alterovitz*, 214 Ind. 186, 14 N.E.2d 570, 117 A.L.R. 770 (1938).

Acts 1909, ch. 95, § 5 imposed upon the insured the duty to read the answers to questions propounded in the application, in order to ascertain whether they were correct. *Metropolitan Life Ins. Co. v. Alterovitz*, 214 Ind. 186, 14 N.E.2d 570, 117 A.L.R. 770 (1938).

Where, in making out application for life insurance, the insurer's medical examiner erroneously entered answers to certain interrogatories, and the insured had such application and the policy issued to him in his possession for eight months prior to his death, he would be held to have adopted such false answers as his own. *Metropolitan Life Ins. Co. v. Alterovitz*, 214 Ind. 186, 14 N.E.2d 570, 117 A.L.R. 770 (1938).

Where the insured under a life policy held the policy and a copy of the application for eight months prior to his death, after they had been delivered to him by the insurer, and false answers had been inserted in the application by the company's medical examiner, the insured would be deemed to have adopted such answers, and parol evidence was not admissible to impeach such false answers by showing that the applicant had answered such questions truthfully. *Metropolitan Life Ins. Co. v. Alterovitz*, 214 Ind. 186, 14 N.E.2d 570, 117 A.L.R. 770 (1938).

An agreement in an application that the insured would abstain from excessive use of intoxicating liquor was a promissory warranty and part of the contract of insurance. *Northwestern Masonic Aid Ass'n v. Bodurtha*, 23 Ind. App. 121, 53 N.E. 787, 77 Am. St. R. 414 (1899).

The provisions of Acts 1909, ch. 95, § 5 that the policy and the application therefor would constitute the entire contract between the

insured and the insurer had reference to the policy contract alone, without necessarily contemplating that at the same time a loan would be made to the insured. *Reserve Loan Life Ins. Co. v. Brammer*, 83 Ind. App. 584, 146 N.E. 876 (1925).

—Incontestability Clause.

An incontestable clause in a life policy inserted in compliance with Acts 1909, ch. 95, § 5 should have been construed in the light of such statute and the time computed from the date of the policy. *Ebner v. Ohio State Life Ins. Co.*, 69 Ind. App. 32, 121 N.E. 315 (1918).

Where a five year term life policy was issued to insured, and thereafter insured, as provided by the term policy, applied for and received a whole life policy in lieu of the term policy, and both policies contained a provision voiding the policy in case of suicide by the insured within two years from the taking effect of the policy, and insured committed suicide within two years after taking out the whole life policy, the suicide clause was to be referred to the date of the term policy, and not the date of the whole life policy. *Western & S. Life Ins. Co. v. Shelby*, 101 Ind. App. 1, 194 N.E. 197 (1935).

As to applicability of incontestable clause provisions of the Indiana statutes, the Indiana courts have consistently recognized a difference between a disability clause in an accident insurance policy and a death obligation in the same policy. *Miccolis v. Mutual Benefit Health & Accident Ass'n*, 115 F.2d 579 (7th Cir. 1940), cert. denied, 312 U.S. 683, 61 S. Ct. 551, 85 L. Ed. 1121 (1941).

The Indiana statute is a part of every Indiana life insurance policy as fully as though the insurer expressly recognized it and inserted it into its contracts. *Miccolis v. Mutual Benefit Health & Accident Ass'n*, 115 F.2d 579 (7th Cir. 1940), cert. denied, 312 U.S. 683, 61 S. Ct. 551, 85 L. Ed. 1121 (1941).

The incontestable clause provisions of the Indiana statutes were inserted to protect the insured against efforts of the insurers to avoid liability after death had sealed the lips of the insured and to compel the insurer to act within a reasonable time to rescind its contract, because of the insured's misstatements, or be bound by its death payment obligations. *Miccolis v. Mutual Benefit Health & Accident Ass'n*, 115 F.2d 579 (7th Cir. 1940), cert. denied, 312 U.S. 683, 61 S. Ct. 551, 85 L. Ed. 1121 (1941).

The incontestable clauses and statutes are favored in the law, and courts construe them, if ambiguous or at all uncertain, in favor of the insured. *Miccolis v. Mutual Benefit Health & Accident Ass'n*, 115 F.2d 579 (7th Cir. 1940), cert. denied, 312 U.S. 683, 61 S. Ct. 551, 85 L. Ed. 1121 (1941).

The incontestability clause provisions of

Policy and Application as Entire Contract. (Cont'd)

—Incontestability Clause. (Cont'd)

the Indiana statute are applicable to an insurance policy which covers death resulting from bodily injuries of a nature commonly described as accidental. *Miccolis v. Mutual Benefit Health & Accident Ass'n*, 115 F.2d 579 (7th Cir. 1940), cert. denied, 312 U.S. 683, 61 S. Ct. 551, 85 L. Ed. 1121 (1941).

A combination of life and disability policies is to be regarded as two distinct contracts, though contained in one instrument, and the statutory provision for an incontestability clause in life insurance policies is inapplicable to the disability insurance. *Guardian Life Ins. Co. v. Barry*, 213 Ind. 56, 10 N.E.2d 614 (1937).

Under the incontestability clause, contest means actions which would affect a rescission of the contract, and not defenses which would merely seek a construction thereof which would determine the nature and extent of the risks covered. *Guardian Life Ins. Co. v. Barry*, 213 Ind. 56, 10 N.E.2d 614 (1937).

The incontestability clause of a life policy after a period of 1 year from the date of the policy, in view of this section, does not preclude the defense of murder, which is expressly stated as an exception to the insurer's liability under the double liability clause. *Werner v. State Life Ins. Co.*, 104 Ind. App. 27, 6 N.E.2d 786 (1937).

—Military Clause.

An insurance company was liable for the death of a serviceman who was on a leave of absence, although the policy contained a provision that military service in time of war was not a risk assumed under the policy, as the risk referred to was an actual one incident to military service and not one not occasioned by military service. *Atkinson v. Indiana Nat'l Life Ins. Co.*, 194 Ind. 563, 143 N.E. 629 (1924).

Representations.

The test of the materiality of a false representation made by the insured in his application is not found in answering whether the information looked for was concerning an ailment that affected the risk, but in answering whether it was of such character that it might reasonably have influenced the insurer in accepting the risk or fixing its terms. *New York Life Ins. Co. v. Kuhlenschmidt*, 213 Ind. 212, 11 N.E.2d 673 (1937).

A "representation," as it relates to insurance contracts, is a part of the preliminary proceedings which precede the contract or policy, while a "warranty" is a part of the contract or policy as completed. *New York Life*

Ins. Co. v. Kuhlenschmidt, 213 Ind. 212, 11 N.E.2d 673 (1937).

A "representation," as affecting the issuance of insurance contract, is a verbal or written statement made by the assured to the insurer before the execution and delivery of the policy, as to the existence of some fact or state of facts tending to induce the insurer to assume the risk by diminishing the estimate he would otherwise form of it. *New York Life Ins. Co. v. Kuhlenschmidt*, 213 Ind. 212, 11 N.E.2d 673 (1937).

In an application for life insurance, a representation differs from a warranty in that while the latter must be true, the former need only be substantially true insofar as it is material to the risk. *New York Life Ins. Co. v. Kuhlenschmidt*, 213 Ind. 212, 11 N.E.2d 673 (1937).

Even in the absence of fraud by the applicant in his answers to questions in the application for insurance, the effect of this section is to make the statements of the applicant representations; if the representations are material to the contract of insurance, and are not substantially correct, it is a sufficient defense to the policy, regardless of whether they were made fraudulently or otherwise. *New York Life Ins. Co. v. Kuhlenschmidt*, 213 Ind. 212, 11 N.E.2d 673 (1937).

Where, in action on a life insurance policy by the beneficiary, the insurer sought to avoid liability on the ground that the policy was void because of false representations made by the insured in his answers to questions propounded in the application, it was not necessary for the jury to find fraud as a matter of fact, but if there was misrepresentation of a material matter, the law would construct the fraud, and, if the jury had not so understood the court's instructions covering such rule, the error in the instructions was cause for reversal. *Metropolitan Life Ins. Co. v. Becraft*, 213 Ind. 378, 12 N.E.2d 952, 115 A.L.R. 93 (1938).

False representations concerning a material fact in an application for life insurance, which representations mislead the insurer, will avoid the contract, regardless of whether the misrepresentation was made innocently or with fraudulent design. *Metropolitan Life Ins. Co. v. Becraft*, 213 Ind. 378, 12 N.E.2d 952, 115 A.L.R. 93 (1938).

Where statements in a life policy, which according to the terms of the policy are to be treated as warranties, are false, the policy will be avoided if the statements were made fraudulently, irrespective of their materiality, but, if there is no showing of fraud, they will only avoid the policy if material. *Metropolitan Life Ins. Co. v. Becraft*, 213 Ind. 378, 12 N.E.2d 952, 115 A.L.R. 93 (1938).

Under this section, providing "that all statements made by the insured in the appli-

Representations. (Cont'd)

cation shall, in the absence of fraud, be deemed representations, and not warranties," actual fraud of the insured by his statements in the application is only material in determining whether the statements are to be treated as representations or warranties. *Metropolitan Life Ins. Co. v. Becraft*, 213 Ind. 378, 12 N.E.2d 952, 115 A.L.R. 93 (1938).

Where the insurer had chosen one of the options permitted under the statute, the insured was bound thereby. *Metropolitan Life Ins. Co. v. Winiger*, 215 Ind. 120, 17 N.E.2d 86 (1938).

Fraud does not make a warranty out of a representation, nor is this accomplished by virtue of the statutory clause required in every policy of life insurance. *New York Life Ins. Co. v. Kuhlenschmidt*, 218 Ind. 404, 33 N.E.2d 340, 135 A.L.R. 397 (1941).

Reserve.

Where a life policy contained a provision authorizing the insurer to deduct not exceeding 2½ percent from the full reserve on policy in order to ascertain the cash surrender value of the policy in making computation of the amount available for the purchase of extended insurance, where the policy had lapsed after three full years of payment of premiums, such provision was valid. *Life Ins. Co. v. Sluss*, 105 Ind. App. 274, 11 N.E.2d 500 (1937).

Statements Deemed Representations and Not Warranties.

The jury's general verdict for beneficiary of life policy determined the issues of insured's fraud against the insurer, and would not be disturbed on appeal, where there was any competent evidence or legitimate inferences to be drawn from it to sustain the verdict. *Federal Life Ins. Co. v. Relias*, 99 Ind. App. 115, 185 N.E. 319 (1933).

Where insured's answers in an application for life insurance could be construed as rep-

resentations merely, they were required to be only substantially true, so far as they were material to the risk. *Federal Life Ins. Co. v. Relias*, 99 Ind. App. 115, 185 N.E. 319 (1933).

Where insured's answers in application for life insurance must be construed as warranties, the answers must be true irrespective of their materiality to the risk. *Federal Life Ins. Co. v. Relias*, 99 Ind. App. 115, 185 N.E. 319 (1933).

A similar clause contained in a former law was held to apply whether incorporated in the policy or not. *Federal Life Ins. Co. v. Relias*, 99 Ind. App. 115, 185 N.E. 319 (1933).

The burden of showing fraud on the part of applicant for life insurance in answers made in application was upon the insurer. *Federal Life Ins. Co. v. Relias*, 99 Ind. App. 115, 185 N.E. 319 (1933).

On the issue of insured's fraud in answers contained in application for life insurance, the jury was the sole judge of what would constitute fraud of insured, and of whether the insured's representations were material to the risk. *Federal Life Ins. Co. v. Relias*, 99 Ind. App. 115, 185 N.E. 319 (1933).

Tender of Premiums.

In action on life insurance policy where insurer contended that policy had been obtained by fraud, said insurer could not prevail because it had not kept tender of premiums open by paying same into court. *Prudential Ins. Co. of Am. v. Smith*, 231 Ind. 403, 108 N.E.2d 61 (1952).

Warranties.

A warranty is created by appropriate language in the insurance contract and is made effective as such when fraud is shown, and if there is no fraud, the language, though in terms of a warranty, is by this statute given the effect of a representation only. *New York Life Ins. Co. v. Kuhlenschmidt*, 218 Ind. 404, 33 N.E.2d 340, 135 A.L.R. 397 (1941).

27-1-12-6. Required provisions for life policies issued on or after a date not later than January 1, 1948. — (a) No policy of life insurance, other than industrial insurance, group life insurance or reinsurance, bearing a date of issue which is the same as or later than a transition date to be selected by the company pursuant to section 12 [IC 27-1-12-12] of this chapter, such transition date in no event to be later than January 1, 1948, shall be delivered or issued for delivery in this state or issued by a company organized under the laws of this state unless the same shall provide the following:

- (1) That all premiums shall be payable in advance, either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one (1) or more of the officers who shall be designated in the policy.

(2) For a grace period of not less than thirty (30) days for the payment of every premium after the first premium, which may be subject to an interest charge, during which period the insurance shall continue in force; Provided, That if the insured shall die within such period of grace the unpaid premium for the current policy year may be deducted in any settlement under the policy.

(3) That the policy, together with the application therefor, a copy of which application shall be attached to the policy and made a part thereof, shall constitute the entire contract between the parties and shall be incontestable after it shall have been in force during the lifetime of the insured for two (2) years from its date, or, at the option of the company after it shall have been in force for two (2) years from its date, except for nonpayment of premiums, and except for violation of the conditions of the policy relating to naval and military service in time of war, and at the option of the company provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted.

(4) That if the age of the insured and/or beneficiary, if that age enters into the determination of the premiums charged or benefits promised, has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age of the insured and/or beneficiary.

(5) That all statements made by the insured in the application shall, in the absence of fraud, be deemed representations and not warranties.

(6) That, in the case of participating policies, the policy shall participate in the surplus of the company as apportioned by the board of directors of the company, and that, beginning not later than the end of the fifth policy year, the company will determine and account for the portion of the divisible surplus so ascertained accruing on the policy, and that the owner of the policy shall have the right to have the current dividends arising from such participation paid in cash, and that at periods of not more than five (5) years, such accounting and payment at the option of the policyholder shall be had. The owner of the policy may elect to take any of the other dividend options in the policy. If the owner of the policy shall not elect any of the other dividend options provided in the policy, the apportioned dividends shall be held to the credit of the policy and be payable in cash at maturity of the policy or be withdrawable in cash at any anniversary of its date; Provided, however, That if the policy shall contain a provision for an apportionment of the surplus at the end of the first policy year and annually thereafter, then and in that event, said policy may provide that each dividend shall be paid subject to the payment of the premium of the next ensuing year.

(7) Nonforfeiture provisions in accordance with the requirements of section 7 [IC 27-1-12-7] of this chapter.

(8) That the company, at any time while the policy is in force, will loan, on the execution of a proper assignment of the policy, and on the sole security thereof, at a specified rate of interest (payable in advance if the company so elects), a sum, which, together with the sum of:

- (A) Previously existing indebtedness, if any, including interest thereon to the end of the current policy year; and
- (B) Interest to the end of the current policy year on the amount newly loaned;

is equal to or, at the option of the insured, less than the cash surrender value at the end of the current policy year as provided for by the policy in accordance with the terms of section 7 of this chapter; Provided, That the company may, as a condition precedent to the making of such loan, and at its own option, require the payment of the unpaid balance, if any, of the premium or premiums for the current policy year, and may require the payment of interest in advance on the total loan to the end of the current policy year. The policy may provide that, if interest on the loan is not paid when due, it shall be added to the existing loan and become a part thereof and bear interest at the same rate as the loan. It shall further be stipulated in the policy that failure to repay any such loan or pay interest thereon shall not void the policy unless such total indebtedness to the company shall equal or exceed such cash surrender value at the time of such failure, nor until thirty (30) days after notice shall have been mailed by the company to the last known address of the insured and to the assignee, if any, if such assignee has notified the company of his address. No condition other than as provided in this subdivision shall be exacted as prerequisite to any such loan. The company shall reserve the right to defer the granting of any loan, except when made to pay premiums on a policy or policies issued by it, for six (6) months after application therefor is made. The provisions of this subdivision shall not be required in term policies nor shall they apply to paid-up insurance issued or granted in exchange for lapsed or surrendered policies.

(9) That, should there have been default in premium payment and the value of the policy applied to the extension of the insurance, and such insurance be in force and the original policy not surrendered to the company and canceled, the policy may be reinstated within three (3) years from the due date of the premium in default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.

(10) That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and of the interest of the claimant and not later than two (2) months after receipt of such proof.

(11) A title on the face and on the back of the policy describing the same.

(b) Any of the provisions of subsection (a) not applicable to single premium policies shall to that extent not be incorporated therein. The provisions of subsection (a) shall not apply to policies issued on substandard, underaverage, or impaired risks. Any policy may be issued or delivered in this state which in the opinion of the department contains provisions on any one (1) or more of the several requirements of subsection (a) more favorable to the policyholder than those required in subsection (a). [Acts 1935, ch. 162,

§ 151A, as added by Acts 1943, ch. 189, § 2, p. 562; 1959, ch. 146, § 1; P.L.252-1985, § 61.]

Indiana Law Journal. Problems Created by the Purchasers' Inability to Bargain Over Life Insurance, 29 Ind. L. J. 635.

NOTES TO DECISIONS

ANALYSIS

Contract.

Incontestability of policy after two years.

Lapse due to nonpayment of premiums.

—Notice.

Premium payment date.

Provisions for benefit of insurer.

—Waiver.

Contract.

Application for life insurance, together with the policy, constitutes the contract between the insurance company and the insured. State Sec. Life Ins. Co. v. Kintner, 243 Ind. 331, 185 N.E.2d 527 (1962).

Incontestability of Policy After Two Years.

Where the insurance policy sued upon was beyond the two year incontestable clause, punitive damages were properly assessed against the insurance company which forced the beneficiary to bring litigation in order to collect on the policy. Rex Ins. Co. v. Baldwin, 163 Ind. App. 308, 46 Ind. Dec. 27, 323 N.E.2d 270 (1975).

Lapse Due to Nonpayment of Premiums.

—Notice.

A policy provision providing for lapse of the policy upon nonpayment of premiums is separate and distinct from a provision requiring notice prior to voiding a policy in which total indebtedness equals or exceeds the value of the policy. Because the provisions are distinct, the policy will lapse according to its terms upon the nonpayment of the necessary premium where there is no loan value available to trigger the premium loan provision. First United Life Ins. Co. v. Northern Ind. Bank & Trust Co., 444 N.E.2d 1241 (Ind. App. 1983).

Collateral References. Beneficiaries' rights as against estate of insured who borrowed on the policy or exercised other options thereunder. 31 A.L.R.2d 979.

Beneficiary's ignorance of existence of life or accident policy as excusing failure to give notice, make proofs of loss, or bring action

Premium Payment Date.

Provisions in insurance that policy years, policy months and policy anniversaries should be computed from the date of issue did not manifest a clear and unambiguous intention that monthly premiums shall be payable on anniversaries of said date. State Sec. Life Ins. Co. v. Kintner, 243 Ind. 331, 185 N.E.2d 527 (1962).

Where insurance policy did not expressly state when monthly premiums were due and payable, it was the effective date of the policy which became determinative of the date that the monthly premiums were due. State Sec. Life Ins. Co. v. Kintner, 243 Ind. 331, 185 N.E.2d 527 (1962).

Where section of insurance policy providing for payment of premiums made no mention of monthly payments but only made provision for annual premiums, or in lieu thereof, premiums payable semiannually, the date of issue to which the specified premiums were related under the terms of the policy could not be applicable where monthly payments were made by insured; the proper anniversary date in such situation, where the time of payment was not expressly specified in the policy, was the date on which the policy became effective. State Sec. Life Ins. Co. v. Kintner, 243 Ind. 331, 185 N.E.2d 527 (1962).

Provisions for Benefit of Insurer.

—Waiver.

Requirements in connection with policy loans calling for the surrender and assignment of the policy to the insurer exist for the benefit of the insurance company and can be waived by it. First United Life Ins. Co. v. Northern Ind. Bank & Trust Co., 444 N.E.2d 1241 (Ind. App. 1983).

within time limited by policy or statute. 28 A.L.R.3d 292.

Calculation of newborn child's age for purposes of life insurance policy requiring that specified age be reached before coverage begins. 37 A.L.R.3d 1448.

Conclusiveness of recitation, in delivered

insurance policy, that initial premium has been paid. 44 A.L.R.3d 1361.

Dividends as preventing lapse of policy for nonpayment of premiums. 8 A.L.R.3d 862.

Doctrine of estoppel or waiver as available to bring within coverage of insurance policy risks not covered by its terms or expressly excluded therefrom. 1 A.L.R.3d 1139.

Respective rights of insured and beneficiary in endowment, accumulation and tontine policies. 72 A.L.R.2d 1311.

Incontestable clause as affected by reinstatement of policy. 23 A.L.R.3d 743.

Incontestable clause as applicable to suit to reform insurance policy. 7 A.L.R.2d 504.

Incontestable clause, what amounts to a contest within the contemplation of. 95 A.L.R.2d 420.

Loan provision, ademption of legacy of proceeds of life insurance policy by making of loan on the policy. 45 A.L.R.3d 10.

Misrepresentation as to employer-employee relationship as within incontestability clause of group insurance. 26 A.L.R.3d 632.

Misrepresentation or misstatement as to insured's marital status, or as to his relationship to beneficiary, as ground for avoiding liability under life insurance policy. 14 A.L.R.3d 931.

Right to proceeds of policy as affected by

murder or killing of insured by beneficiary or by a third person who procures the policy. 27 A.L.R.3d 794.

Sufficiency of insurer's compliance with statutory requisites as to attaching copy of application to, or making it part of, policy. 18 A.L.R.3d 760.

Suicide clause of life or accident insurance as affected by incontestable clause. 37 A.L.R.3d 337.

Theory of waiver as applicable where provisions of policy or acts of insurer are inconsistent with statutory requirements. 9 A.L.R.2d 1436.

Tort liability of insurer issuing life policy without consent of insured or to beneficiary without insurable interest. 9 A.L.R.3d 1972.

Transmission of insurance policy to insurance agent as satisfying provision requiring delivery to insured. 19 A.L.R.3d 953.

Waiver by insured of statutory provisions as to policy. 9 A.L.R.2d 1436.

Usury: expenses or charges in form of commissions to agents, brokers, or like intermediaries incident to loan of money. 52 A.L.R.2d 703.

Accident or life insurance: Death by auterotic asphyxiation as accidental. 62 A.L.R.4th 823.

27-1-12-7. Standard nonforfeiture provisions of life policies issued on or after a date not later than January 1, 1948. — (a) No policy of life insurance, except as stated in subsection (f) of this section, bearing a date of issue which is the same as or later than a transition date to be selected by the company pursuant to section 12 [IC 27-1-12-12] of this chapter, such transition date in no event to be later than January 1, 1948, shall be delivered or issued for delivery in this state, or issued by a company organized under the laws of this state, unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the department are at least as favorable to defaulting or surrendering policyholders as are the minimum requirements specified in this section and are essentially in compliance with subsection (g) of this section:

(1) That, in the event of default in any premium payment after premiums have been paid for at least one full year in the case of ordinary insurance or three (3) full years in the case of industrial insurance, the company will grant, upon proper request made not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of an amount determined as specified in this section. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits;

(2) That, upon surrender of the policy within sixty (60) days after the due date of any premium in default, after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the company will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of a stated amount determined as specified in this section;

(3) That, if a request for a nonforfeiture benefit or surrender of the policy is not made or effected as contemplated in subdivisions (1) and (2) of this subsection, a designated paid-up nonforfeiture benefit shall become operative as specified in the policy;

(4) That, if the policy shall have become paid up by completion of all premium payments or if it continues in the form of a paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be determined in this section;

(5) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions to the credit of the policy and that there is no indebtedness to the company on account of or secured by the policy;

(6) A brief and general statement of the method to be used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy on the policy anniversaries beyond the last anniversary of those for which such values and benefits are consecutively shown in the table provided for in subdivision (5) of this subsection;

(7) An explanation of the manner in which the cash surrender value and the paid-up nonforfeiture benefit or benefits are affected by the existence of any paid-up additions to the policy or any indebtedness to the company on account of or secured by the policy.

Any of the provisions of this subsection not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The company shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor and surrender of the policy.

(b) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy (including any existing paid-up additions) if there had been no default, over the sum of (1) the then present value of the adjusted premiums as defined in subsections (d) and (dd), corresponding to premiums which would have fallen due on and after such anniversary, and (2) the amount of any indebtedness to the company on account of or secured by the policy. However, for any policy issued on or after the operative date of subsection (dd) of this section which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value is an amount not less than the sum of the cash surrender value as defined in this paragraph for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in this paragraph for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.

For any family policy issued on or after the operative date of subsection (dd) of this section, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash surrender value referred to in the first paragraph of this subsection shall be an amount not less than the sum of the cash surrender value, as defined in that paragraph, for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value, as defined in that paragraph, for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse. Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by such paid-up policy (including any existing paid-up additions) decreased by any indebtedness to the company on account of or secured by the policy.

(c) Any paid-up nonforfeiture benefit available under a policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be not less than the cash surrender value then provided for by such policy or, if none is provided for, the minimum amount determinable in accordance with subsection (b) in the absence of the condition of subsection (a)(2) that premiums be paid for at least a specified period.

(d) This subsection does not apply to policies issued on or after the operative date of subsection (dd) of this section. Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special

hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty per cent (40%) of the adjusted premium for the first policy year; (iv) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less; provided that for the sole purpose of computing the amounts of (iii) and (iv) above, no adjusted premiums in excess of four per cent (4%) of the amount of insurance or uniform amount equivalent thereto shall be used.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at date of issue as the benefits under the policy; provided that in the case of a policy for a varying amount of insurance issued on the life of a child under age ten (10), the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten (10) were the amount provided by such policy at age ten (10) or at expiry, if earlier.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two (2) paragraphs of this subsection except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in the succeeding paragraphs of this subsection, all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided, that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall

be made on the basis of the rate of interest, not exceeding three and one-half percent (3 ½%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided that in calculating the present value of any nonforfeiture benefits consisting of paid-up term insurance with or without pure endowment of a lesser amount, the rates of mortality assumed may be not more than one hundred and thirty per cent (130%) of the rates of the mortality according to such applicable table; and provided that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table or tables of mortality as may be specified by the company and approved by the department.

In the case of ordinary policies bearing a date of issue which is the same as or later than the operative date of this paragraph as defined in the succeeding paragraph, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided, that such rate of interest shall not exceed three and one-half percent (3 ½%) per annum, except that such rate of interest shall not exceed four percent (4%) per annum for policies bearing a date of issue of or later than September 1, 1973 and prior to September 1, 1979, and the interest rate may not exceed five and one-half percent (5 ½%) per annum for policies bearing a date of issue after August 31, 1979; Provided That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured; provided that in calculating the present value of any nonforfeiture benefits consisting of paid-up term insurance with or without pure endowment of a lesser amount, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table; and Provided That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table or tables of mortality as may be specified by the company and approved by the department.

Any company may file with the department a written notice of its election to invoke the provisions of the preceding paragraph after a specified date before January 1, 1966. After the filing of such notice, then upon such specified date (which shall be the operative date of the preceding paragraph for such company), the preceding paragraph shall become operative with respect to the ordinary policies issued by such company and bearing a date of issue which is the same as or later than such specified date. If a company makes no such election, the operative date of the preceding paragraph for such company shall be January 1, 1966.

In the case of policies of industrial insurance bearing a date of issue which is the same as or later than the operative date of this paragraph as defined in the succeeding paragraph, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest,

specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; Provided That such rate of interest shall not exceed three and one-half percent (3 ½%) per annum, except that such rate of interest shall not exceed four percent (4%) per annum for policies bearing a date of issue of or later than September 1, 1973 and before September 1, 1979, and the rate of interest may not exceed five and one-half percent (5 ½%) per annum for policies bearing a date of issue after August 31, 1979; Provided, further, That in calculating the present value of any nonforfeiture benefits consisting of paid-up term insurance with or without pure endowment of a lesser amount, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table; and Provided That for insurance issued on a substandard basis, the calculations of any such adjusted premiums and present values may be based on such other table or tables of mortality as may be specified by the company and approved by the department.

Any company may file with the department a written notice of its election to invoke the provisions of the preceding paragraph after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date (which shall be the operative date of the preceding paragraph for such company), the preceding paragraph shall become operative with respect to the policies of industrial insurance issued by such company and bearing a date of issue which is the same as or later than such specified date. If a company makes no such election, the operative date of the preceding paragraph for such company shall be January 1, 1968.

(dd)(1) This subsection applies to all policies issued on or after the operative date of this subsection. Except as provided in subdivision (7) of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) one percent (1%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and (iii) one hundred twenty-five percent (125%) of the nonforfeiture net level premium as defined in this subsection. Provided That in applying the percentage specified in (iii) no nonforfeiture net level premium may be considered to exceed four percent (4%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

(2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits

provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.

(3) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(4) Except as otherwise provided in subdivision (7) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of: (A) the sum of (i) the then present value of the then future guaranteed benefits provided for by the policy and (ii) the additional expense allowance, if any, over (B) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of (i) one percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and (ii) one hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.

(6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (A) by (B) where:

(A) Equals the sum of:

- (i) The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and
- (ii) The present value of the increase in future guaranteed benefits provided for by the policy; and

(B) Equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(7) Notwithstanding any other provisions of this subsection to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, that policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.

(8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of (i) the Commissioners 1980 Standard Ordinary Mortality Table or (ii) at the election of the company for any one (1) or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table; and shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection, for policies issued in that calendar year. However:

(A) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year.

(B) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (a) of this section, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

(C) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.

(D) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance Table for policies of industrial insurance.

(E) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the tables referred to in this subdivision.

(F) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.

(G) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or the Commissioners 1961 Industrial Extended Term Insurance Table.

(9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in IC 27-1-12-10, rounded to the nearer one quarter of one percent ($\frac{1}{4}$ of 1%).

(10) Notwithstanding any other provision in this title to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

(11) After September 1, 1981, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1989.

(e) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (b), (c), (d), and (dd) may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding the provisions of subsection (b), additional benefits payable (1) in the event of death or dismemberment by accident or accidental means, (2) in the event of total and permanent disability, (3) as reversionary annuity or deferred reversionary annuity benefits, (4) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (5) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six (26), is uniform in amount after the child's age is one (1), and has not become paid up by reason of the death of a parent of the child, and (6) as other policy

benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(f) This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty (20) years or less expiring before age seventy-one (71), for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in subsections (d) and (dd), is less than the adjusted premium so calculated on a term policy of uniform amount, or renewal of it, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance, and for a term of twenty (20) years or less expiring before age seventy-one (71), for which uniform premiums are payable during the entire term of the policy, nor to any policy which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections (b), (c), (d), and (dd) of this section, exceeds two and one-half percent ($2\frac{1}{2}\%$) of the amount of insurance at the beginning of the same policy year, nor to any policy which shall be delivered outside this state through an agent or other representative of the company issuing the policy. For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

(g) This subsection, in addition to all other applicable subsections of this section, applies to all policies issued on or after January 1, 1985. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be an amount which does not differ by more than two tenths of one percent (.2%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of (a) the greater of zero (0) and the basic cash value specified in this subsection and (b) the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.

The basic cash value shall be equal to the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as defined in this subsection, corresponding to premiums which would have fallen due on and after such anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in subsection (b) or (d) of this section, whichever is applicable,

shall be the same as are the effects specified in that subsection on the cash surrender values defined in that subsection.

The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in subsection (d) or (dd), whichever is applicable. Except as is required by the next succeeding sentence of this paragraph, such percentage:

- (1) Must be the same percentage for each policy year between the second policy anniversary and the later of (i) the fifth policy anniversary and (ii) the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two tenths of one percent (.2%) of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and
- (2) Must be such that no percentage after the later of the two (2) policy anniversaries specified in the preceding item (a) may apply to fewer than five (5) consecutive policy years. No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsection (d) or (dd) of this section, whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

All adjusted premiums and present values referred to in this subsection shall for a particular policy be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other subsections of this section. The cash surrender values referred to in this subsection shall include any endowment benefits provided for by the policy.

Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in subsections (a), (b), (c), (dd), and (e) of this section. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed as subdivisions (1) through (6) in subsection (e) of this section shall conform with the principles of this subsection.

(h) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsections (a), (b), (c), (d), or (dd) of this section then:

- (1) The commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsection (a), (b), (c), (d), or (dd) of this section;
- (2) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds; and

(3) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this section, as determined by regulations promulgated by the department. [Acts 1935, ch. 162, § 151B, as added by Acts 1943, ch. 189, § 3, p. 562; 1949, ch. 8, § 1; 1959, ch. 146, § 2; 1963, ch. 212, § 1; 1973, P.L. 273, § 1; 1979, P.L. 250, § 1; 1981, P.L. 237, § 1.]

Indiana Law Journal. Problems Created by the Purchasers' Inability to Bargain Over Life Insurance, 29 Ind. L. J. 635.

Cited: First United Life Ins. Co. v. Northern Ind. Bank & Trust Co., 444 N.E.2d 1241 (Ind. App. 1983).

NOTES TO DECISIONS

ANALYSIS

Construction with other laws.
Worthless policy.

Construction with Other Laws.

IC 27-1-12-8 is applicable to all life insurance policies issued or delivered in Indiana, regardless of the applicability of this section. Great Horizons Dev. Corp. v. Massachusetts

Mut. Life Ins. Co., 457 F. Supp. 1066 (N.D. Ind. 1978), *aff'd*, 601 F.2d 596 (7th Cir. 1979).

Worthless Policy.

Where policy had no positive value, nonforfeiture benefits were not available and this section was inapplicable. Great Horizons Dev. Corp. v. Massachusetts Mut. Life Ins. Co., 457 F. Supp. 1066 (N.D. Ind. 1978), *aff'd*, 601 F.2d 596 (7th Cir. 1979).

Collateral References. Dividends as preventing lapse of policy for nonpayment of premiums. 8 A.L.R.3d 862.

Insured's exercise of election afforded under life insurance policy as affected by his death before complete consummation of option. 15 A.L.R.3d 1317.

Insurer's acceptance of defaulted premium payment or defaulted on premium note, as affecting liability for loss which occurred during period of default. 7 A.L.R.3d 414.

Estoppel of, or waiver by, issuer of life insurance policy to assert defense of lack of insurable interest. 86 A.L.R.4th 828.

27-1-12-8. Prohibited provisions for life policies. — No policy of life insurance shall hereafter be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, if it contain any of the following provisions:

- (1) Limiting the time within which any action at law or in equity may be commenced, to less than three (3) years after the cause of action shall accrue.
- (2) By which the policy shall purport to be issued or to take effect more than six (6) months before the original application for insurance was made.
- (3) That in the event of the maturity of any policy after the expiration of the contestable period thereof, for any mode of settlement at maturity of less value according to the company's published rates therefor then in use, than the amount insured under the policy, plus dividend additions, if any, less any indebtedness to the company on account of or secured by the policy and less any premium that may, by the terms of the policy, be deducted.
- (4) For the forfeiture of the policy for failure to repay any loan on the policy, or to pay interest on such loan while the total indebtedness on the policy is less than the loan value thereof; or any provision for

forfeiture for failure to repay any such loan or to pay interest thereon, unless such provision contain a stipulation that no such forfeiture shall occur until at least thirty (30) days after notice shall have been mailed by the company to the last-known address of the insured and to the assignee, if any, if such assignee has notified the company of his address.

(5) Which contains any clause promising to the holder of such policy any special dividend or benefit to be derived from any other policy; nor shall any company organized under the laws of this state issue in connection with any policy any separate paper or contract promising any such special dividend or benefit; nor shall any company be admitted to do business in this state that issues policies which contain any such clause, or which issues in connection with any policy any separate paper or contract promising any such dividend or benefit. [Acts 1935, ch. 162, § 152, p. 588.]

Cited: Haney v. Old Equity Ins. Co., 156 Ind. App. 212, 36 Ind. Dec. 395, 295 N.E.2d 828 (1973).

NOTES TO DECISIONS

ANALYSIS

Construction with other laws.

Forfeiture for nonpayment of premiums.

Forfeiture for nonrepayment of loan.

Lapse due to nonpayment of premiums.

—Notice.

Limitation of actions.

Notice of current loan value.

Settlement at maturity.

Construction with Other Laws.

This section is applicable to all life insurance policies issued or delivered in Indiana, regardless of the applicability of IC 27-1-12-7. *Great Horizons Dev. Corp. v. Massachusetts Mut. Life Ins. Co.*, 457 F. Supp. 1066 (N.D. Ind. 1978), *aff'd*, 601 F.2d 596 (7th Cir. 1979).

Forfeiture for Nonpayment of Premiums.

This section does not prohibit automatic forfeiture or termination of a policy for failure to pay the required premiums. *Great Horizons Dev. Corp. v. Massachusetts Mut. Life Ins. Co.*, 457 F. Supp. 1066 (N.D. Ind. 1978), *aff'd*, 601 F.2d 596 (7th Cir. 1979).

Forfeiture for Nonrepayment of Loan.

This section does not require an insurer to seek forfeiture for failure to repay a loan whenever indebtedness equals or exceeds the loan value of a policy; it simply requires notice if forfeiture is sought for that particular reason. *Great Horizons Dev. Corp. v. Massachusetts Mut. Life Ins. Co.*, 457 F. Supp. 1066

(N.D. Ind. 1978), *aff'd*, 601 F.2d 596 (7th Cir. 1979).

Lapse Due to Nonpayment of Premiums.

—Notice.

A policy provision providing for lapse of the policy upon nonpayment of premiums is separate and distinct from a provision requiring notice prior to voiding a policy in which total indebtedness equals or exceeds the value of the policy. Because the provisions are distinct, the policy will lapse according to its terms upon the nonpayment of the necessary premium where there is no loan value available to trigger the premium loan provision. *First United Life Ins. Co. v. Northern Ind. Bank & Trust Co.*, 444 N.E.2d 1241 (Ind. App. 1983).

Limitation of Actions.

A provision in Acts 1865 (Spec. Sess.), p. 105, reading, "no condition or agreement not to sue for a period of less than three years shall be valid," was upheld as a valid exercise of legislative discretion as affecting foreign insurance companies. *Metropolitan Cas. Ins. Co. v. Brownell*, 68 F.2d 481 (7th Cir. 1934), *aff'd*, 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935).

Notice of Current Loan Value.

Indiana law did not require insurer to keep the insured informed or notified as to the current loan value available on his policy. *Great Horizons Dev. Corp. v. Massachusetts Mut. Life Ins. Co.*, 457 F. Supp. 1066 (N.D. Ind. 1978), *aff'd*, 601 F.2d 596 (7th Cir. 1979).

Settlement at Maturity.

The intent of subdivision (3) of this section was that the "value" must not be less than the "amount" specified, or in other words it must be at least the actuarial equivalent of the

amount insured on the face of the policy. *Dunbar v. Union Cent. Life Ins. Co.*, 14 Ind. Dec. 623, 283 F. Supp. 823 (S.D. Ind. 1968), *aff'd*, 410 F.2d 644, 17 Ind. Dec. 485 (7th Cir. 1969).

Collateral References. Construction of express insurance policy provision restricting insurers' right to cancel or otherwise terminate coverage. 19 A.L.R.3d 1429.

Insurer's failure to pay amount of admitted liability as precluding reliance on statute of limitations. 41 A.L.R.3d 1111.

Remedies and measure of damages for wrongful cancellation of life, health and accident insurance. 34 A.L.R.3d 245.

Stipulated period of time coverage of insurance policy as affected by countersigning sub-

sequent to specified commencement date. 22 A.L.R.2d 984.

Time when period provided for in suicide clause of life or accident policy begins to run. 37 A.L.R.3d 933.

Validity of contractual time period, shorter than statute of limitations, for bringing action. 6 A.L.R.3d 1197.

Policy provision limiting time within which action may be brought on the policy as applicable to tort action by insured against insurer. 66 A.L.R.4th 859.

27-1-12-9. Valuation of life policies issued before a date not later than January 1, 1948. — Policies of life insurance bearing dates of issue which are earlier than a transition date selected by the company pursuant to section 12 [IC 27-1-12-12] of this chapter, such transition date in no event to be later than January 1, 1948, shall be valued in accordance with the following methods and standards:

(a) As soon as practicable after the filing of the annual statement of any life insurance company organized under this article or under any other law or laws of this state and doing business in this state in the office of the department, as provided in IC 27-1-20-21, the department shall proceed to ascertain the net reserve value of each policy in force on December 31 immediately preceding, upon the basis of the American Experience Table of Mortality and four percent (4%) interest or Actuaries' Combined Experience Table of Mortality and four percent (4%) interest, as adopted by the company, and should any such company issue any policies based upon a higher standard than the above, such policies shall be valued according to such higher standard. For the purpose of making such valuation, the department may employ an actuary to do the same, who shall be paid by the company for which the services are rendered, but nothing herein shall prevent any company from making said valuation herein contemplated, which may be accepted by the department upon such proof as it may determine. The department, or anyone representing it, in making any valuation of the policies of any life insurance company incorporated under any law of this state, for the purpose of ascertaining the net reserve value of outstanding policies of any such company, shall compute such net reserve value according to the terms of each policy outstanding, and should any policy provide that any time covered thereby is term insurance, or for a valuation as term insurance for any time covered by such policy, the valuation of such policy shall be in accordance with any such provision in such policy, but any policy issued after March 5, 1909, may provide for not more than one (1) year's preliminary term insur-

ance, and if the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of less than twenty (20) annual premiums or under an endowment preliminary term policy, exceeds that charged for life insurance under twenty (20) payment life preliminary term policies of the same company, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty (20) payment life preliminary term policy issued in the same year at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period equal to the difference between the value at the end of such period of such a twenty (20) payment life preliminary term policy and the full reserve at such time of such limited payment life or endowment policy. All policies of life insurance, including policies issued on a reducing premium plan, or a return premium plan shall be valued according to the provisions in this article, except that, in every case in which the actual premium charged for an insurance is less than the net premium for such insurance, based upon the American Men Ultimate Table of Mortality with three and one-half percent (3 ½%) interest, then and not otherwise the company shall also be charged with the value of an annuity, the amount of which shall be equal to the difference between the premium charged and the net premium for such insurance based upon the American Men Ultimate Table with three and one-half percent (3 ½%) interest and the term of which in years shall equal the number of future annual payments due on the insurance at the date of valuation; Provided, however, That the provisions of this subdivision for the valuation of policies shall apply to life insurance policies only.

(b) Insurance against permanent mental or physical disability resulting from accident or disease or against accidental death, combined with a policy of life insurance, shall be valued on a basis of fifty percent (50%) of the additional annual premium charged therefor.

(c) The department, for the purpose of ascertaining the solvency of any company, may at any time during the year proceed to ascertain the net reserve value of the policies of any company, as provided in this section.

(d) Reserves may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all policies and contracts than the reserves produced by the standard specified in this section.

(e) Any company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided for in this section may, with the approval of the department, adopt any standard of valuation producing lower aggregate reserves, but not lower in the aggregate than the reserves produced by the standard or standards specified in its policies. [Acts 1935, ch. 162, § 153, p. 588; 1943, ch. 189, § 4, p. 562; P.L.252-1985, § 62.]

Opinions of Attorney General. An Indiana insurance company may not receive credit for deposits held in a bank of a foreign state or country which are not required by the

law or regulation of that foreign state or country and which are held for the convenience of the insurance company. 1943, p. 270.

27-1-12-10. Valuation of life policies and contracts issued on or after a date not later than January 1, 1948 — Valuation of group annuity and endowment contracts. — Policies of life insurance and annuity and pure endowment contracts bearing dates of issue that are the same as or later than a transition date to be selected by the company pursuant to section 12 [IC 27-1-12-12] of this chapter, such transition date in no event to be later than January 1, 1948, and annuities and pure endowments purchased on or after the operative date provided for in paragraph (i) of subsection (2) of this section under group annuity and pure endowment contracts bearing dates of issue prior to such transition date, shall be valued in accordance with the following methods and standards:

(1) The department shall value, or cause to be valued, as of December 31 of each year the reserve liabilities (hereinafter called reserves) of all outstanding life insurance policies and annuity and pure endowment contracts of each life insurance company doing business in this state, and may certify the amount of such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium or other method) used in the calculation of same; provided, that in the case of alien companies, the valuation shall be limited to policies and contracts written within the United States, its territories or possessions. Group methods and approximate averages for fractions of a year or otherwise may be used in calculating such reserves, and the valuation made by the company may be accepted by the department upon such evidence of its correctness as the department may require. In lieu of the valuation of the reserves required in this section of any foreign or alien company, the department may accept any valuation of the reserves of such company made or caused to be made by the insurance supervisory official of any state or jurisdiction (a) if such valuation complies with the minimum standard provided for in this section, and (b) if the insurance supervisory official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of reserve valuation of the department evidencing that such valuation was made in a specified manner according to which the aggregate reserves are at least as large as if computed in the manner prescribed by the law of such state or jurisdiction.

The department, for the purpose of ascertaining the solvency of any company, may at any time during the year proceed to ascertain the reserve liabilities of the policies of any company, as hereinbefore provided.

(2) Except as otherwise provided in subsections (2)(i) and (2)(j) of this section, the minimum standard for the valuation of all such policies and contracts shall be the commissioners' reserve valuation method defined in subsection (3) of this section, three and one-half percent (3½%) interest, or four percent (4%) interest in the case of policies and

contracts, other than annuity and pure endowment contracts, bearing a date of issue of or later than September 1, 1973, and before September 1, 1979, five and one-half percent (5 ½%) interest for single premium life insurance policies, and four and one-half percent (4 ½%) interest for all other policies and contracts issued after August 31, 1979, and the following tables:

- (a) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies — the Commissioners 1941 Standard Ordinary Mortality Table for such policies bearing a date of issue prior to the operative date of the fifth paragraph of subsection (d) of section 7 [IC 27-1-12-7(d)] of this chapter, the Commissioners 1958 Standard Ordinary Mortality Table for such policies bearing a date of issue which is the same as or later than the operative date of the fifth paragraph of IC 27-1-12-7(d) and prior to the operative date of IC 27-1-12-7(dd); provided, that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for such policies issued on or after the operative date of IC 27-1-12-7(dd): (i) the Commissioners 1980 Standard Ordinary Mortality Table; or (ii) at the election of the company for any one (1) or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors; or (iii) any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the department for use in determining the minimum standard of valuation for such policies.
- (b) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies — the 1941 Standard Industrial Mortality Table for such policies bearing a date of issue prior to the operative date of the seventh paragraph of IC 27-1-12-7(d) and for such policies bearing a date of issue which is the same as or later than such operative date the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by the rule promulgated by the department for use in determining the minimum standard of valuation for such policies; for such policies bearing a date of issue which is the same as or later than such operative date.
- (c) For ordinary annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts — the 1937 Standard Annuity Mortality Table or, at the option of the company the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these tables approved by the department.
- (d) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts — the Group Annuity Mortality Table for 1951, any modification of such

table approved by the department, or, at the option of the company, any of the tables or modifications of tables authorized for ordinary annuity and pure endowment contracts.

(e) For total and permanent disability benefits in or supplementary to ordinary policies or contracts for such policies or contracts bearing a date of issue of or later than January 1, 1966, the tables of Period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by rule promulgated by the department for use in determining the minimum standard of valuation for such policies; for such policies or contracts bearing a date of issue of or later than January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for such policies or contracts bearing a date of issue prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(f) For accidental death benefits in or supplementary to ordinary and industrial policies — for such policies bearing a date of issue of or later than January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for such policies; for such policies bearing a date of issue of or later than January 1, 1961, and prior to January 1, 1966, either such table or, at the option of the company, the Inter-Company Double Indemnity Mortality Table; and for such policies bearing a date of issue prior to January 1, 1961, the Inter-Company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(g) For group life insurance issued on a standard basis, excluding any disability and accidental death benefits in such policies — the Commissioners 1958 Standard Ordinary Mortality Table or such other table as may be specified by the company and approved by the department.

(h) For other special benefits and for life insurance benefits contained in policies issued on a substandard basis — such tables as may be approved by the department.

(i) Except as provided in subsection (2)(j) of this section, minimum standard for the valuation of all ordinary annuity and pure endowment contracts bearing a date of issue which is the same as or later than the operative date of this paragraph (i), as defined in this subsection, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endow-

ment contracts, shall be the commissioners' reserve valuation method defined in subsection (3) of this section and the following tables and interest rates:

(i) For ordinary annuity and pure endowment contracts bearing a date of issue before September 1, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the department, and six percent (6%) interest for ordinary single premium immediate annuity contracts and four percent (4%) interest for all other ordinary annuity and pure endowment contracts.

(ii) For ordinary annuity and pure endowment contracts bearing a date of issue after August 31, 1979, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the department for use in determining the minimum standard of valuation for such contracts, or any modification of these tables approved by the department, and seven and one-half percent (7½%) interest for ordinary single premium immediate annuity contracts, five and one-half percent (5½%) interest for single premium deferred annuity and pure endowment contracts; and four and one-half percent (4½%) interest for all other ordinary annuity and pure endowment contracts.

(iii) For all annuities and pure endowments purchased before September 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the department, and six percent (6%) interest.

(iv) For all annuities and pure endowments purchased after August 31, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rule promulgated by the department for use in determining the minimum standard of valuation for such annuities and pure endowments, or any modification of these tables approved by the department, and seven and one-half percent (7½%) interest.

After September 1, 1973, any company may file with the department a written notice of its election to invoke the provisions of this paragraph (i) after a specified date before January 1, 1979, which specified date shall be the operative date of this paragraph (i) for such company; provided, that any company may elect an operative date for ordinary annuity and pure endowment contracts different from that elected for group annuity and pure endowment contracts. If a

company makes no such election, the operative date of this paragraph (i) for such company shall be January 1, 1979.

(j)(A) *Applicability of this Subsection*

(1) The interest rates used in determining the minimum standard for the valuation of:

- (a) All life insurance policies issued in a particular calendar year, on or after the operative date of IC 27-1-12-7(dd);
- (b) All ordinary annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1982;
- (c) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1982, under group annuity and pure endowment contracts; and
- (d) The net increase, if any, in a particular calendar year after January 1, 1982, in amounts held under guaranteed interest contracts;

shall be the calendar year statutory valuation interest rates as defined in this subsection.

(B) *Calendar Year Statutory Valuation Interest Rates*

(1) The calendar year statutory valuation interest rates, 1, shall be determined as follows and the results rounded to the nearer one-quarter of one percent ($\frac{1}{4}$ of 1%):

(a) For life insurance,

$$I = .03 + W(R1 - .03) + W/2(R2 - .09)$$

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W(R - .03)$$

where R1 is the lesser of R and .09,

R2 is the greater of R and .09,

R is the reference interest rate defined in this subsection, and W is the weighting factor defined in this subsection.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in (b) above, the formula for life insurance stated in (a) above shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in (b) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less.

(d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in (b) above shall not apply.

(e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in (b) above shall apply.

(2) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent ($\frac{1}{2}$ of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when IC 27-1-12-7(dd) becomes operative.

(C) *Weighting Factors*

(1) The weighting factors referred to in the formulas stated above are given in the following tables:

(a) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less:	.50
More than 10, but not more than 20:	.45
More than 20:	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(b) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

(c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (b) above, shall be as specified in tables (i), (ii), and (iii) below, according to the rules and definitions in (iv), (v) and (vi) below:

(i) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor For Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50

Guarantee Duration (Years)	Weighting Factor For Plan Type		
	A	B	C
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

(ii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in (i) above increased by:

Plan Type		
A	B	C
.15	.25	.05

(iii) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in (i) or derived in (ii) increased by:

Plan Type		
A	B	C
.05	.05	.05

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guaranteed duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

(v) Plan type as used in the above tables is defined as follows:

- Plan Type A: At any time policyholder may withdraw funds only (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five (5) years or more, or (3) as an immediate life annuity, or (4) no withdrawal permitted.
- Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only (1) with adjustment to reflect changes in interest rates or asset

values since receipt of the funds by the insurance company, or (2) without such adjustment but in installments over five (5) years or more, or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five (5) years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years either (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company, or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(vi) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in fund.

(D) *Reference Interest Rate*

(1) The Reference Interest Rate referred to in subsection (B) of this section shall be defined as follows:

(a) For all life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (b) above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in (b) above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in (b) above, the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(E) *Alternative Method for Determining Reference Interest Rates*

In the event that Moody's Corporate Bond Yield Average — Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average — Monthly Average Corporates, as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National Association of Insurance Commissioners and approved by rule promulgated by the department, may be substituted.

(3) Reserves according to the commissioners' reserve valuation method, for life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums, shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net

premiums therefor. The modified net premiums for any such benefits shall be such uniform percentage of the respective contract premiums for such benefits, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

(a) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one (1) per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due; provided that such net level annual premium shall not exceed the net level annual premium on the nineteen (19) year premium whole life plan for insurance of the same amount at an age one (1) year higher than the age at issue of such policy.

(b) A net one (1) year term premium for such benefits provided for in the first policy year.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (6) of this section, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of such policy anniversary calculated as described in that paragraph, but with (i) the value defined in subparagraph (a) of that paragraph being reduced by fifteen percent (15%) of the amount of such excess first year premium, (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date, (iii) the policy being assumed to mature on such date as an endowment, and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the above comparison, the mortality and interest bases stated in paragraphs (a) through (h) and paragraph (j) of subsection (2) of this section shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) life insurance and endowment benefits of policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts, purchased under a retirement plan or a plan of deferred compensation,

established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a valuation method consistent with the principles set forth in the preceding paragraph of this subsection.

This paragraph applies to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code. Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in those contracts, is the greatest of the respective excesses of present values, at the date of valuation, of future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by the terms of those contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable before the end of each contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contract for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of those contracts to determine nonforfeiture values.

(4) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the corresponding aggregate reserves calculated in accordance with the methods set forth in subsections (3), (6), and (7) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies, anything in subsections (2) and (5) to the contrary notwithstanding. In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined to be necessary by the qualified actuary under IC 27-1-12-10.1.

(5) Reserves for any category of policies, contracts, or benefits as may be determined by the company and approved by the department may be calculated at the option of the company according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard established by this

section, but the rate or rates of interest used shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits in such policies, contracts, or benefits.

Any company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided for in this section may, with the approval of the department, adopt any standard of valuation producing lower aggregate reserves, but not lower in the aggregate than the reserves produced by the minimum standard specified in this section.

(6) If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for that policy or contract shall be the greater of:

(A) The reserve calculated according to the mortality table, rate of interest, and method actually used for that policy; or

(B) The reserve calculated by the method actually used for that policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this subsection are those standards stated in paragraphs (a) through (h) and paragraph (j) of subsection (2) of this section.

Provided that for any life insurance policy issued on or after January 1, 1985, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination of the two in an amount greater than such excess premium, the foregoing provisions of this section [subdivision] (6) shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (3) of this section, ignoring the second paragraph of subsection (3) of this section. The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (3) of this section, including the second paragraph of that subsection, and the minimum reserve calculated in accordance with subsection (6) of this section.

(7) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections (3) and (6) of this section, the reserves which are held under any such plan must:

- (a) Be appropriate in relation to the benefits and the pattern of premiums for that plan, and
- (b) Be computed by a method which is consistent with the principles of this section, as determined by rules promulgated by the department. [Acts 1935, ch. 162, § 153A, as added by Acts 1943, ch. 189, § 5, p. 562; 1959, ch. 146, § 3; 1963, ch. 212, § 2; 1973, P.L. 273, § 2; 1979, P.L. 250, § 2; 1980, P.L. 22, § 16; 1981, P.L. 237, § 2; P.L. 2-1987, § 35; P.L. 5-1988, § 142; P.L. 116-1994, § 22; P.L. 130-1994, § 17.]

Compiler's Notes. As amended, this section has no subsection (2)(j)(A)(2).

Section 408 of the Internal Revenue Code, referred to in the last paragraph of subdivision (3), may be found at 26 U.S.C. § 408.

The bracketed term "subdivision" was in-

serted by the compiler in the proviso in subsection (6), as that appears to have been the term intended.

Effective Dates. P.L. 5-1988, § 241, declared an emergency and made this section effective September 1, 1987.

27-1-12-10.1. Actuary's opinion. — (a) As used in this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets any requirements the commissioner may establish in rules adopted under IC 4-22-2 as a prerequisite to offering the opinions required by this section.

(b) Each life insurance company doing business in Indiana shall annually submit to the department the opinion of a qualified actuary as to whether the reserves and related actuarial items held by the life insurance company in support of the policies and contracts specified by the commissioner by rules adopted under IC 4-22-2:

- (1) Are computed appropriately;
- (2) Are based on assumptions that satisfy contractual provisions;
- (3) Are consistent with prior reported amounts; and
- (4) Comply with applicable laws of Indiana.

The commissioner shall adopt rules under IC 4-22-2 to implement this section. The rules adopted by the commissioner must specify the information to be included in an actuary's opinion submitted under this section and may require the inclusion in the opinion of any other items of information that the commissioner considers necessary to the scope of the opinion.

(c) Unless it is exempted by a rule adopted by the commissioner under IC 4-22-2, a life insurance company doing business in Indiana shall include with the actuary's opinion submitted under subsection (b) an opinion by the same qualified actuary. The opinion required under this subsection shall state whether the reserves and related actuarial items held by the life insurance company in support of the policies and contracts specified by the commissioner by rules adopted under IC 4-22-2 make adequate provision for the obligations of the company under the policies and contracts, including but not limited to:

- (1) The benefits under; and
- (2) The expenses associated with;

the policies and contracts of the life insurance company. In making the determination required under this subsection, the qualified actuary shall consider the assets held by the company with respect to reserves and related

actuarial items, including but not limited to investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts.

(d) The commissioner, in rules adopted under IC 4-22-2, may provide for a transition period for establishing any higher reserves that the qualified actuary may consider necessary in order to render the opinion required by this section.

(e) The following requirements apply to the actuary's opinion required by subsection (c):

- (1) A memorandum, which meets all requirements that the commissioner may establish by rules adopted under IC 4-22-2 concerning form and content, shall be prepared to support each actuarial opinion.
- (2) If:

(A) The life insurance company fails to provide a supporting memorandum at the request of the commissioner within a period specified by rules adopted by the commissioner under IC 4-22-2; or

(B) The commissioner determines that the supporting memorandum provided by the life insurance company does not meet the standards set forth in rules adopted by the commissioner under IC 4-22-2 or is otherwise unacceptable to the commissioner;

the commissioner may engage a qualified actuary at the expense of the life insurance company to review the opinion and the basis for the opinion and to prepare a supporting memorandum, if a supporting memorandum is required by the commissioner.

(f) The following requirements apply to every opinion under this section:

(1) The opinion shall be submitted with the annual statement of the life insurance company and must reflect the valuation of reserve liabilities for each year ending after December 31, 1994.

(2) The opinion must apply to all business in force, including individual and group health insurance plans, and must meet all requirements that the commissioner may establish concerning form and content by rules adopted under IC 4-22-2.

(3) The opinion must be based on standards adopted periodically by the Actuarial Standards Board and on additional standards that the commissioner may prescribe by rules adopted under IC 4-22-2.

(4) In the case of an opinion required to be submitted by a foreign or an alien life insurance company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in Indiana.

(g) Except in cases of fraud or willful misconduct, a qualified actuary who provides an opinion required by this section is not liable for damages to any person other than:

(1) The life insurance company for which the opinion is offered; and

(2) The commissioner;

for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(h) The rules adopted by the commissioner under IC 4-22-2 to implement this section shall provide for disciplinary action against a life insurance

company or a qualified actuary who violates this section or the rules adopted under this section.

(i) Except as provided in subsections (j) and (k), a memorandum submitted by a life insurance company in support of an opinion required by this section and any other material provided to the commissioner by the company in connection with the memorandum:

- (1) Are declared confidential for the purposes of IC 5-14-3-4(a)(1);
- (2) Shall be kept confidential by the commissioner; and
- (3) Are not subject to subpoena;

other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or rules adopted under this section.

(j) A memorandum submitted by a life insurance company in support of an opinion required by this section and material provided to the commissioner by the company in connection with the memorandum may be released by the commissioner:

- (1) With the written consent of the life insurance company; or
- (2) To the American Academy of Actuaries in response to a written request that:

- (A) States that the memorandum or other material is required for the purpose of professional disciplinary proceedings; and
- (B) Sets forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material.

(k) Whenever any portion of a memorandum submitted to the commissioner by a life insurance company in support of an opinion required by this section:

- (1) Is cited by the company in its marketing;
- (2) Is cited before any governmental agency other than a state insurance department; or
- (3) Is released by the company to the news media;

all portions of the memorandum are no longer confidential.

(l) The commissioner shall adopt rules under IC 4-22-2 containing the minimum standards for the valuation of health plans. [P.L.116-1994, § 23; P.L.130-1994, § 18.]

Compiler's Notes. This section was separately enacted by P.L.130-1994 and by P.L. 116-1994, neither act referring to the other. Because the sections were identical, this section is set out only once.

Effective Dates. P.L.130-1994, § 53, de-

clared an emergency and § 18 provided that this section take effect January 1, 1995.

P.L.116-1994, § 79, declared an emergency and § 23 provided that this section take effect January 1, 1995.

27-1-12-10.5. Establishment of reserves. — The department shall adopt rules under IC 4-22-2 to prescribe minimum standards for the establishment of reserves as required by the National Association of Insurance Commissioners or its successor organization for insurers writing Class 1(a), Class 1(b), and Class 1(c) lines of business. [P.L.116-1194, § 24; P.L.130-1994, § 19.]

27-1-12-11. Deposit of securities. — (a) After the department has ascertained the net reserve value of all policies (as defined in section 9 [IC 27-1-12-9] of this chapter) or the reserve liabilities (as defined in section 10 [IC 27-1-12-10] of this chapter) of any life insurance company organized and doing business in this state, the department shall notify said company of the amount or amounts thereof. Within sixty (60) days after the date of such notification, the officers of such company shall deposit with the department, solely for the security and benefit of all its policyholders, assets in an amount, invested in accordance with section 2 [IC 27-1-12-2] of this chapter (except paragraph 20 of section 2(b) [IC 27-1-12-2(b)] of this chapter) which together with the assets already deposited with the department and such additional assets as may be deposited by said company with other states or governments, pursuant to the requirements of the laws of such other states or governments in which said company is doing business, shall be not less than the lesser of the amount of such reserve value or reserve liabilities or the amount provided under subsection (f). No life insurance company organized under this article or any other law of this state shall be required to make such deposit until the amount prescribed by this subsection exceeds the amount deposited by said company under IC 27-1-6-14 or IC 27-1-6-15. Investments in real estate shall be deposited in the form of satisfactory evidences of ownership. The deposit requirement in relation to policy loans and bank deposits shall be considered fulfilled by the inclusion of such item in the company's annual statement, but subject to the right of the company at any time, and the obligation of the company on demand of the department, to file with the department a certificate as to the amount of such item.

(b) If the department in the course of the year ascertains that the net reserve value of a company's policies (as defined in section 9 of this chapter) or its reserve liabilities (as defined in section 10 of this chapter) exceeds such company's deposits as required by subsection (a), it may require such company within sixty (60) days to increase its deposit to the required amount.

(c) Nothing in this article shall prevent the deposit of bonds, mortgages, or other securities which meet the investment requirements of a foreign or alien state or country, to an amount not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such state or country. If, pursuant to the law of a foreign or alien state or country in which an Indiana life insurance company is doing business, securities belonging to such a company are required to be deposited within the boundaries of such foreign or alien state or country, credit for the amount of such deposit, not exceeding the amount of the reserves on policies issued to residents of, and to corporations doing business in, such foreign or alien state or country, may be taken by the company as an offset against its deposits required under this article.

(d) If, pursuant to the law of a foreign or alien state or country, a life insurance company domiciled therein is not permitted a reserve credit for reserves maintained by a reinsurer foreign to such a state or country, except on the condition that the amount of such reserve be deposited with the insurance supervisory official of such state or country, a deposit credit for

the amount of such reserves so deposited shall be allowed a domestic life insurance company accepting reinsurance from companies domiciled in such state or country.

(e) Any deposit of assets with the department pursuant to any law superseded by this chapter shall, prior to the first deposit date contemplated in subsection (a), be continued with the department and otherwise be subject to this section.

(f) The amount of the deposit, except as otherwise provided in subsection (a), shall be one million dollars (\$1,000,000) excluding policy loans and bank deposits, or such greater amount as the department deems necessary to protect the interests of the policyholders of a particular company by an order to the company to deposit additional amounts under this section.

(g) Each company:

- (1) must report to the department each new asset acquisition to establish its eligibility for investment under the numbered categories of permissible investments under section 2 of this chapter at such regular intervals, within the time limit following each interval and on the forms as the department may require, without complying with IC 4-22-2; and
- (2) when ordered by the department, shall make any additional report relating to:

(A) the category of eligibility, the characteristics, or the amount of any investment; or

(B) the amount of the assets of the company in any category; calculated under the rules applied for annual statement purposes. [Acts 1935, ch. 162, § 153B, as added by Acts 1943, ch. 189, § 6, p. 562; 1945, ch. 175, § 4, p. 420; 1981, P.L. 238, § 1; P.L.31-1988, § 12; P.L.186-1997, § 6.]

Cross References. Stock companies, deposit to secure policies, IC 27-1-6-14.

27-1-12-12. Right of company to select transition date. — The period beginning July 1, 1943, and ending January 1, 1948, both dates inclusive, shall be a transition period between the nonforfeiture provisions set forth respectively in sections 5, 6, and 7 [IC 27-1-12-5, IC 27-1-12-6 and IC 27-1-12-7] of this chapter and between the valuation provisions set forth respectively in sections 9 and 10 [IC 27-1-12-9 and IC 27-1-12-10] of this chapter. Accordingly, a company may, by means of a writing filed with the department, select a transition date within such period, but should a company fail to make such a selection, the transition date as to such company shall be January 1, 1948. Except as otherwise provided in section 10 [IC 27-1-12-10] of this chapter for group annuities and pure endowments, policies issued prior to the transition date shall be governed in all respects and at all times by sections 5 and 9 [IC 27-1-12-5 and IC 27-1-12-9] of this chapter, and policies issued on or after such transition date shall be governed in all respects and at all times by sections 6, 7, and 10 of this chapter. A company's election of a transition date shall be irrevocable and shall apply to sections 6, 7, and 10 of this chapter without exception, as well as to that portion of section 31 [IC 27-1-12-31] of this chapter which relates

to policies bearing a date of issue later than such transition date. [Acts 1935, ch. 162, § 153C, as added by Acts 1943, ch. 189, § 7, p. 562; 1973, P.L. 273, § 3; 1974, P.L. 1, § 12; P.L.252-1985, § 63.]

27-1-12-13. Filing of policy forms. — A policy of life insurance shall not be issued or delivered in this state until the form of the same has been filed with the department, nor if the department give written notice within thirty (30) days of such filing, to the company proposing to issue it showing wherein the form of such policy does not comply with the requirements of the laws of this state. [Acts 1935, ch. 162, § 154, p. 588.]

Cross References. Mutual life insurance policies, filing forms, IC 27-8-3-1.

27-1-12-14. Beneficiaries under life insurance policies. — (a) As used in this section, “premium” includes any deposit or contribution.

(b) As used in this section, “proceeds or avails” means death benefits, cash surrender and loan values, premiums waived, and dividends whether used in reduction of the premiums or in whatsoever manner used or applied, excepting only where the debtor has, subsequent to the issuance of the policy, actually elected to receive the dividends in cash.

(c) Any person whose life is insured by any life insurance company may name as his payee or beneficiary any person or persons, natural or artificial, with or without an insurable interest, or his estate. A designation at the option of the policyowner may be made either revocable or irrevocable, and the option elected shall be set out in and shall be made a part of the application for the certificate or policy of insurance. When the right of revocation has been reserved, the person whose life is insured, subject to any existing assignment of the policy, may at any time designate a new payee or beneficiary, with or without reserving the right of revocation, by filing written notice thereof at the home office of the corporation, accompanied by the policy for suitable indorsement thereon.

(d) Any person may effect an insurance on his life, for any definite period of time, or for the term of his natural life, to inure to the sole benefit of the spouse and children, or of either, or other relative or relatives dependent upon such person or any creditor or creditors as he may cause to be appointed and provided in the policy.

(e) Except as provided in subsection (g), all policies of life insurance upon the life of any person, which name as beneficiary, or are bona fide assigned to, the spouse, children, or any relative dependent upon such person, or any creditor, shall be held, subject to change of beneficiary from time to time, if desired, for the benefit of such spouse, children, other relative or creditor, free and clear from all claims of the creditors of such insured person or of the person's spouse; and the proceeds or avails of all such life insurance shall be exempt from all liabilities from any debt or debts of such insured person or of the person's spouse.

(f) A premium paid for an individual life insurance policy that names as a beneficiary, or is legally assigned to, a spouse, child, or relative who is

dependent upon the policy owner is not exempt from the claims of the creditors of the policy owner if the premium is paid:

- (1) not more than one (1) year before the date of the filing of a voluntary or involuntary bankruptcy petition by; or
- (2) to defraud the creditors of;

the policy owner.

(g) The insurer issuing the policy is discharged from all liability by payment of the proceeds and avails of the policy in accordance with the terms of the policy unless, before payment, the insurer has received at the insurer's home office, written notice by or on behalf of a creditor of the policy owner that specifies the amount claimed against the policy owner. [Acts 1935, ch. 162, § 155, p. 588; 1973, P.L. 274, § 1; 1975, P.L. 280, § 1; 1981, P.L. 239, § 1; P.L.253-1995, § 1; P.L.82-1998, § 2.]

Cross References. Alienating proceeds, restrictions, IC 27-2-5-1.

Indiana Law Journal. Debtor's Exemption Laws: Time for Modernization, 34 Ind. L. J. 355.

The Indiana Life Insurance Proceeds Exemption Statute and the Law of Fraudulent Conveyances, 42 Ind. L. J. 416.

Res Gestae. Status of exemptions in Indiana, 38 (No. 4) Res Gestae 14 (1994).

Cited: Foremost Life Ins. Co. v. Department of Ins., 274 Ind. 181, 78 Ind. Dec. 346, 409 N.E.2d 1092 (1980).

NOTES TO DECISIONS

ANALYSIS

In general.

Constitutionality.

Assignments.

Change of beneficiary.

Divorce settlement.

Endowment policies.

Exemption of proceeds.

—Necessities of life.

Nature of beneficiary's interest.

In General.

An annuity contract purchased and paid for in full by a bankrupt was excepted by Indiana statute from the class of insurance and annuity which were not subject to the process against a beneficiary for the payment of his debts. *Pueblo Sav. & Trust Co. v. Power*, 115 F.2d 69 (7th Cir. 1940).

Under a prior similar provision, where a person took out a policy of insurance on his own life as an honest and bona fide transaction, and the amount insured was made payable to a person having no interest in the life, or where such a policy was assigned to one having no interest in the life, the beneficiary in the one case and the assignee in the other could hold and enforce the policy if it were valid in its inception, and the policy was not procured or the assignment made as a contrivance to circumvent the law against betting, gaming, and wagering policies. *Lincoln Nat'l Life Ins. Co. v. Sobel*, 110 Ind. App. 331, 35 N.E.2d 121 (1941).

Constitutionality.

This section violates Ind. Const., Art. 1, § 22 by exempting an unlimited amount of intangible assets from execution to pay legitimate debts, making it possible to closet virtually every liquid asset possessed by a debtor simply through placing the assets in some form of life instrument policy. In *re Foster*, 168 Bankr. 183 (Bankr. S.D. Ind. 1994).

Assignments.

The words of this section "subject to any existing assignment of the policy" refer to an assignment of the policy to some other person, and not to a situation where the policy was assigned to insurer to secure a policy loan. *Saiter v. Miller*, 108 Ind. App. 373, 27 N.E.2d 900 (1940).

Bona fide assignments of life insurance policies to persons having no insurable interest in the life of the insured are valid, even in the absence of the statute which provides that any person whose life is insured by any life insurance company may name as his payee or beneficiary any person or persons, natural or artificial, with or without an insurable interest, or his estate. *Oleska v. Kotur*, 113 Ind. App. 428, 48 N.E.2d 88 (1943), overruled on other grounds, *Plummer v. Ulsh*, 248 Ind. 462, 229 N.E.2d 799 (1967).

Change of Beneficiary.

If insured reserved the right to change the beneficiary, the former beneficiary had no

Change of Beneficiary. (Cont'd)

interest in the policy after a change of beneficiary was made in accordance with the terms of the policy. *Henrich v. Prior*, 84 Ind. App. 211, 146 N.E. 865 (1925).

The provision of this section concerning forwarding the policy of life insurance in connection with a change of beneficiary is only a general, directory provision and has no application where the policy is lost, destroyed, or wrongfully withheld from the owner. *Olinger v. Northwestern Mut. Life Ins. Co.*, 153 Ind. App. 376, 32 Ind. Dec. 651, 287 N.E.2d 580 (1972).

Where insured intended to make his fiancée his beneficiary, but because insurance company wanted beneficiary to be a family member he made his father beneficiary with the intention to change the beneficiary to his wife when they were married, and after marriage the change was mentioned to his agent and the issuance of another policy was discussed and later insured could not contact his agent, evidence was sufficient for court to find that insured had done everything in his power to effect the change and consider that change had been made. *Borgman v. Borgman*, 420 N.E.2d 1261 (Ind. App. 1981).

Less than strict compliance with policy change requirements may be adequate to change a beneficiary where circumstances show the insured has done everything within his power to effect the change; nevertheless, an attempt to change the beneficiary of a life insurance policy by will, without more, is ineffectual. *Cook v. Equitable Life Assurance Soc'y*, 428 N.E.2d 110 (Ind. App. 1981).

Where the insured executed a holographic will purporting to leave the proceeds of a life insurance policy to his second wife and son, and the named beneficiary in the policy was the insured's first wife, the first wife was entitled to the proceeds. *Cook v. Equitable Life Assurance Soc'y*, 428 N.E.2d 110 (Ind. App. 1981).

Decedent, by changing the designated beneficiary in a group life policy to his mother, exercised a statutory right. *Metropolitan Life Ins. Co. v. Tallent*, 445 N.E.2d 990 (Ind. App. 1983).

Where there are lifetime benefits associated with a group term life insurance policy, such as a cash surrender value, under the statutory definition of "property" decedent would be precluded by an order restraining transfer of property pending a marriage dissolution proceeding from exercising those benefits in such a manner as to dispose of their value. However, even in that case, the restraining order would not act as a bar to the decedent's right to change the beneficiary of the policy. *Metropolitan Life Ins. Co. v. Tallent*, 445 N.E.2d 990 (Ind. App. 1983).

Divorce Settlement.

A wife's interest in her husband's life insurance policy in which she was named as beneficiary was not a property right but a mere expectancy not covered by a divorce settlement of property rights and, upon the death of the husband without having changed the beneficiary, she was entitled to the proceeds of the policy. *Wolf v. Wolf*, 147 Ind. App. 240, 21 Ind. Dec. 664, 259 N.E.2d 93 (1970).

Where, upon the dissolution of his first marriage, the insured agreed to designate his two children as beneficiaries to a \$20,000 life insurance policy on his life as part of the negotiated property settlement agreement, the property settlement agreement precluded the insured's right of revocation pursuant to the condition in subsection (a) to the right to designate a new beneficiary. *Meece v. Meece*, 495 N.E.2d 827 (Ind. App. 1986).

Endowment Policies.

A child's educational endowment policy under which the right of the father to collect the maturity value was contingent upon both he and his sons being alive at the maturity date, and providing that if the sons should die before the maturity date and before their father's death, the father was entitled only to a return of the premiums, but if the father died before that date, the sons, if then living, would be entitled to the maturity amount or to certain other optional benefits, was a life insurance policy for the benefit of the children within the meaning of this section, and exempt to a bankrupt under the bankruptcy act. *Fogel v. Bangs*, 164 F.2d 214 (7th Cir. 1947), cert. denied, 333 U.S. 862, 68 S. Ct. 741, 92 L. Ed. 1141 (1948).

An exemption statute should be interpreted in favor of those for whose benefit it was enacted. *Fogel v. Bangs*, 164 F.2d 214 (7th Cir. 1947), cert. denied, 333 U.S. 862, 68 S. Ct. 741, 92 L. Ed. 1141 (1948).

Exemption of Proceeds.

Proceeds of life insurance policies were statutorily exempt from execution to satisfy an underlying judgment finding that the insured and his beneficiary had committed fraud. *Duck v. Tuchman*, 497 N.E.2d 945 (Ind. App. 1986).

The decedent's life insurance proceeds were not afforded the protection of subsection (c) of this section where the named beneficiary violated the public policy by murdering the policy holder. *Estate of Chiesi v. First Citizens Bank*, 604 N.E.2d 3 (Ind. App. 1992), aff'd, 613 N.E.2d 14 (Ind. 1993).

—Necessities of Life.

The life insurance proceeds qualified as funds that were beyond the claims of creditors where the debtor demonstrated that the life

Exemption of Proceeds. (Cont'd)**—Necessities of Life. (Cont'd)**

insurance policy was related to the necessities of life. In re Bannourah, 201 Bankr. 954 (Bankr. S.D. Ind. 1996).

The statutory exemption for life insurance is constitutionally suspect and may be claimed only upon proof that the exemption is required to afford the necessities of life. Citizens Nat'l Bank v. Foster, 668 N.E.2d 1236 (Ind. 1996).

Collateral References. 44 Am. Jur. 2d Insurance § 1700 et seq.

Respective rights of insured and beneficiary in endowment, accumulation and tontine policies. 72 A.L.R.2d 1311.

Change of beneficiary in old line insurance policy as affected by failure to comply with requirements as to consent of insurer. 19 A.L.R.2d 5.

Original beneficiary as affected by waiver by insurer to change of beneficiary in old line insurance policy without compliance with requirements as to manner of making change. 19 A.L.R.2d 5.

Power of guardian of incompetent to change beneficiary in ward's life insurance policy. 21 A.L.R.2d 1191.

Validity of assignment of life insurance policy to one who has no insurable interest in insured. 30 A.L.R.2d 1310.

Insurer's tort liability for wrongful or negligent issuance of life policy. 37 A.L.R.4th 972.

Partner or partnership, insurable interest in life of partner. 70 A.L.R.2d 577.

Misrepresentation or misstatement as to insured's marital status, or as to his relation-

Nature of Beneficiary's Interest.

Where by the terms of the policy the right is reserved by the insured to change the beneficiary at will, then the original beneficiary acquires only a defeasible vested interest in the policy, a mere expectancy, until after the death of the insured. Metropolitan Life Ins. Co. v. Tallent, 445 N.E.2d 990 (Ind. App. 1983).

ship to beneficiary, as ground for avoiding liability under life insurance policy. 14 A.L.R.3d 931.

Killing of insured by beneficiary as affecting life insurance or its proceeds. 27 A.L.R.3d 794.

Beneficiary's ignorance of existence of life or accident policy as excusing failure to give notice, make proofs of loss, or bring action within time limited by policy or statute. 28 A.L.R.3d 292.

Divorce decree purporting to award life insurance to husband as terminating wife-beneficiary's rights notwithstanding failure to formally change beneficiary. 70 A.L.R.3d 348.

Change of beneficiary in group life insurance policy as affected by failure to comply with policy requirements as to manner of making change. 78 A.L.R.3d 466.

Right of named beneficiary, upon change of beneficiary, to recover premiums paid on life insurance. 92 A.L.R.3d 1330.

Effectiveness of change of named beneficiary of life or accident insurance policy by will. 25 A.L.R.4th 1164.

27-1-12-15. Insurance contracts by or for the benefit of minors. —

(a) Any person who is not of the full age of eighteen (18) years but who is of the age, as determined by the nearest birthday, of not less than sixteen (16) years, shall be deemed competent to contract for life, accident and sickness insurance or annuities upon the life of such minor for the benefit of such minor or for the benefit of the father, mother, husband, wife, brother or sister, child or children, or any grandparent of such minor, and to exercise and enjoy every right, privilege and benefit provided by any such contracts on the life of such minor, subject to the foregoing limitations as to the designation of beneficiary.

(b) No person who shall have attained the age of eighteen (18) years is incompetent because of age to contract for any of the kinds of insurance described in Class 1 of IC 1971, 27-1-5-1, or to exercise and enjoy every right, privilege and benefit provided by any such contract.

(c) No person who shall have attained the age of eighteen (18) years is incompetent because of age to receive and to give full acquittance and

discharge for payments made to such person by a life insurance company under the provisions of a contract of insurance of any of the kinds described in Class 1 of IC 1971, 27-1-5-1, or under the provisions of a settlement agreement executed in connection with any such contract of insurance. [Acts 1935, ch. 162, § 155a, as added by Acts 1961, ch. 203, § 1; 1971, P.L. 383, § 1; 1973, P.L. 275, § 1.]

Cross References. Persons over eighteen years, contract for insurance, IC 27-2-11.1-1.

NOTES TO DECISIONS

Subrogation.

A minor child who, having been injured in an automobile accident, received compensation both under his parents' group insurance policy and in settlement of a personal

injury action was bound by the subrogation clause in the insurance policy. *Hagerman v. Mutual Hosp. Ins.*, 175 Ind. App. 293, 60 Ind. Dec. 409, 371 N.E.2d 394 (1978).

Collateral References. 44 Am. Jur. 2d Insurance § 1730.

Insurable interest of brother or sister in life of sibling. 60 A.L.R.3d 98.

27-1-12-16. Designation of trustee to receive proceeds of insurance or annuity contracts. — (A) The terms "proceeds" and "proceeds of life insurance" and similar phrases used in this section mean and include any and all benefits payable by the insurer by reason of the death of the insured under any "life insurance," "policy of life insurance," "insurance policy," "policy," or "annuity contract" providing for benefits on the death of the insured, including individual ordinary life policies, certificates issued under a group policy, annuity contracts, and accident or health policies.

(B) Proceeds of life insurance policies heretofore made payable to a trustee or trustees named as beneficiary or hereafter to be named beneficiary under an inter vivos trust shall be paid directly to the trustee or trustees and held and disposed of by the trustee or trustees as provided in the trust agreement or declaration of trust in writing made and in existence on the date of death of the insured, whether or not such trust or declaration of trust is amendable or revocable or both, or whether it may have been amended, and notwithstanding the reservation of any or all rights of ownership under the insurance policy or annuity contract; subject, however, to a valid assignment of any part of the proceeds. It is not necessary to the validity of such trust agreement or declaration of trust that it be funded or have a corpus other than the right, which need not be irrevocable, of the trustee or trustees named therein to receive such proceeds as beneficiary.

(C) A policy of life insurance or annuity contract may designate as beneficiary a trustee or trustees named or to be named by will if the designation is made in accordance with the provisions of the policy or contract whether or not the will is in existence at the time of the designation. The company shall, within sixty days after receipt at its home office of proof of probate of the will, pay the proceeds of such insurance or contract to the trustee or trustees designated in the insurance policy or annuity contract, subject to a valid assignment of any part thereof and any other

provisions of the policy or contract, unless prior to the actual payment by the company it shall have received at its home office written notice of the filing or pendency of (1) objection to the probate of said will, or (2) a suit to contest the validity of said will or of the testamentary trust or trusts created therein to which such proceeds are payable, or (3) petition for the construction of that part of the testamentary trust designating the trustee or trustees: Provided, however, That if the company makes any payment or payments of proceeds to such trustee or trustees in accordance with the terms of the policy or contract before receipt at the home office of such written notice, said trustee or trustees shall give full acquittance therefor to the company and such payment shall fully discharge the company from all claims and liability to the extent thereof. Provided, further, That if such written notice is received by the company, payment by it of any unpaid proceeds may be delayed during the pendency of said objections, suit, or petition for construction for not to exceed one (1) year from the date of death of insured, and thereafter the company may pay any and all unpaid proceeds due by reason of the death of the insured to the clerk of the court wherein the probate proceeding is pending by depositing them with such clerk who, as such clerk, shall give full acquittance to the company for all proceeds so paid and the company shall be fully discharged from any and all liability and claims by or on behalf of any other person or persons whomsoever to the extent of the amount so paid and deposited. The clerk shall thereafter hold and disburse said proceeds in accordance with the order of said court to the party or parties and in the amount or amounts provided in said order upon receiving proper receipts therefor; all Provided, however, That the procedure provided for herein shall not preclude the company from interpleading or being interpleaded in any appropriate proceeding or filing a bill of interpleader in any court of competent jurisdiction.

(D) If no claim to proceeds is made by any trustee designated as the beneficiary in any policy of insurance or annuity contract within one year after the death of the insured or if satisfactory evidence is furnished the insurance company within the one-year period showing that there is or will be no trustee qualified to receive the proceeds, payment may be made by the insurance company to those thereafter entitled.

(E) The proceeds of insurance collected by the trustee or trustees are not part of the testator's estate and are not subject to the debts of the insured or to transfer, inheritance, or estate taxes to any greater extent than if the proceeds were payable to some named beneficiary or beneficiaries other than to the estate of the insured or executor or administrator thereof.

(F) This section applies to all trustee designations of a beneficiary or beneficiaries by an insured dying after June 15, 1967, regardless of when made, naming a trustee or trustees of a trust or trusts established by will.

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application. [Acts 1935, ch. 162, § 155b, as added by Acts 1967, ch. 127, § 4.]

Notre Dame Law Review. A Proposed Trust Code for Indiana—An Effort at Reform, 45 Notre Dame L. 427.

Cited: State, Dep't of Revenue v. Estate of Powell, 165 Ind. App. 482, 48 Ind. Dec. 437, 333 N.E.2d 92 (1975).

Collateral References. Disposition of in-

surance proceeds on personal property specifically bequeathed or devised. 82 A.L.R.3d 1261.

Liability of insurance agent or broker on ground of inadequacy of liability-insurance coverage procured. 60 A.L.R.5th 165.

27-1-12-17. Corporations authorized to insure officers and employees. — Any corporation organized under the laws of this state may, when authorized by its board of directors, or its executive committee, cause to be insured, for its benefit, the life of any of its directors, officers, agents or employees, and to pay the premiums for such insurance; and may continue to pay such premiums after the insured shall cease to be such a director, officer, agent or employee of such corporation.

Due authority for such corporation to effect, assign, release, convert, surrender, or take any other action with reference to such insurance, shall be sufficiently evidenced to the insurance company by a certificate to that effect by the secretary, or other corresponding officer of such corporation under its corporate seal. Any such certificate shall protect the insurance company for any act done or suffered by it upon the faith thereof, without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. The beneficiary in such a policy shall not be changed except with the consent of such corporation, beneficiary, effecting such insurance.

No person shall, by reason of interest in the subject matter, be disqualified from acting as a director, or as a member of the executive committee of such corporation on any corporate act touching such insurance. [Acts 1935, ch. 162, § 156, p. 588.]

NOTES TO DECISIONS

ANALYSIS

Construction.
Purpose.

Construction.

In light of the overall purpose of this section, the language authorizing the purchase of life insurance by general corporations makes it clear that a life insurance company need not inquire as to whether a corporate customer is acting ultra vires in purchasing or maintaining life insurance. *Melrose v. Cap-*

itol City Motor Lodge, Inc., 705 N.E.2d 985 (Ind. 1998).

Purpose.

The purpose of this section is to limit a life insurance company's duty of inquiry into the validity of corporate authority or the regularity of corporate proceedings in a transaction involving insurance on the life of a general business corporation's directors, officers, agents or employees. *Melrose v. Capitol City Motor Lodge, Inc.*, 705 N.E.2d 985 (Ind. 1998).

Collateral References. Payment of premiums by corporation on corporate officer's

life insurance as affecting right to policy. 56 A.L.R.3d 1086.

27-1-12-17.1. Insurable interest in life of employee — Proceeds exempt from creditors or dependents. — (a) As used in this section, "employee" includes a director, an officer, a partner, a manager, a nonman-

agement employee, and a retired employee of the employer or the employer's affiliates.

(b) As used in this section, "employer" means an individual, a corporation, a partnership, a limited liability company, and any other legal entity that has at least one (1) employee and is legally doing business in Indiana. The term includes an association of employers and the employer's affiliates.

(c) An employer that provides life insurance, health insurance, disability insurance, retirement benefits, or similar benefits to an employee of the employer has an insurable interest in the life of the employee. The trustee of a trust established by an employer for the benefit of the employer has the same insurable interest as the employer in the life of an employee. The trustee of a trust established by an employer that provides life insurance, health insurance, disability insurance, retirement benefits, or similar benefits to an employee of the employer and acts in a fiduciary capacity with respect to that employee or the employee's dependents or beneficiaries has an insurable interest in the life of the employee for whom benefits are to be provided.

(d) An employer or the trustee of a trust established by the employer may acquire insurance upon an employee in whom the employer or the trustee of the trust has an insurable interest as determined under subsection (c) if the employee consents to be insured. An employee consents to be insured if the employee is provided written notice of the insurance coverage and does not object to the insurance coverage within thirty (30) days of receipt of the notice.

(e) An insurable interest must exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(f) Proceeds of a policy issued under this section are exempt from the claims of the employee's creditors or dependents. [P.L.254-1995, § 1.]

27-1-12-18. Extension of time for premium payment. — A life insurance company may enter into subsequent agreements in writing with the insured, which need not be attached to the policy, to extend the time for the payment of any premium, or part thereof, upon condition that failure to comply with the terms of such agreement shall lapse the policy as provided in said agreement or in the policy. Subject to such lien as may be created to secure any indebtedness contracted by the insured in consideration of such extension, said agreement shall not impair any right existing under the policy. [Acts 1935, ch. 162, § 157, p. 588.]

Cited: Haney v. Old Equity Ins. Co., 156 Ind. App. 212, 36 Ind. Dec. 395, 295 N.E.2d 828 (1973).

Collateral References. Dividends as preventing lapse of policy for nonpayment of premiums. 8 A.L.R.3d 862.

Insurer's acceptance of defaulted premium

or defaulted on premium note, as affecting liability for loss which occurred during period of default. 7 A.L.R.3d 414.

Person to whom renewal premium may be paid or tendered so as to bind insurer. 42 A.L.R.3d 751.

27-1-12-19. Addition of loan interest to principal. — In ascertaining the indebtedness due upon policy or premium loans, the interest, if not paid

when due, shall be added to the principal of such loans and shall bear interest at the rate specified in the note or loan agreement. [Acts 1935, ch. 162, § 158, p. 588.]

27-1-12-20. Premium deposits. — No life insurance company shall receive or accept, by virtue of the provisions set forth in any policy or indorsement thereon, any premium deposit in excess of the regular premium then due whenever the total premium deposit together with the policy reserve shall be sufficient as a gross premium to convert the policy into a fully paid policy. The policy or indorsement shall contain a provision that the amount of any premium deposit fund held by the company will be included as a part of the cash surrender value of the policy, a provision providing for the disposition of such fund if it is not sufficient to pay the next premium, and a provision that such fund is not withdrawable except by surrender of the policy, a loan thereon or through the selection of a nonforfeiture value. [Acts 1935, ch. 162, § 159, p. 588.]

27-1-12-21. Holding proceeds of policies in trust. — Any life insurance company organized under the laws of this state shall have power to hold the proceeds of any policy issued by it under a trust or other agreement upon such terms and restrictions as to revocation by the policyholder and control by beneficiaries and with such exemptions from the claims of creditors of beneficiaries other than the policyholder as shall have been agreed to in writing by such company and the policyholder. Such insurance company shall not be required to segregate funds so held but may hold them as a part of its general corporate assets. [Acts 1935, ch. 162, § 160, p. 588.]

Cross References. Other provisions concerning freedom of proceeds from claims of creditors, IC 27-2-5-1.

27-1-12-22. Cessation of business. — If it appears to the department from an examination made by it or by an examiner appointed by it, that the assets of any domestic life insurance company are insufficient to justify its continuance in business or that its capital is impaired the department shall notify such company, setting a time, within the discretion of the commissioner, by which such impairment of assets or of its capital shall be restored and further notifying such company to issue no new policies until its assets have become equal to its liabilities, or its capital has been restored unimpaired. [Acts 1935, ch. 162, § 161, p. 588.]

Cross References. Indiana Insurance Guaranty Association, duties to prevent insolvency, IC 27-6-8-10.

Insolvency, IC 27-1-3-14.
Voluntary liquidation, IC 27-1-10.

27-1-12-23. Stock life insurance companies may become mutuals. — Any domestic stock life insurance company may become a mutual life insurance company and to that end may carry out a plan for the acquisition of shares of its capital stock by amending its articles of incorporation and complying with the following requirements:

(a) Such plan shall be approved by a two-thirds ($\frac{2}{3}$) vote of the policyholders, present and voting at a meeting called for that purpose. For the purpose of this section a quorum shall consist of at least ten per cent (10%) of the policyholders of such company. Each policyholder whose insurance shall have been in force for at least one (1) year prior to such meeting shall have one (1) vote, regardless of the number of policies or amount of insurance he may have with such company. Notice of such meeting shall be given by mailing from the principal office of such company at least thirty (30) days prior to the date set for such meeting in a sealed envelope, postage prepaid, addressed to such policyholders at their last known post-office addresses. Voting shall be by ballot, in person or by proxy, or by mail under the direction of inspectors appointed by the commissioner and in accordance with such other regulations as he may prescribe. Such inspectors shall have the power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters, and to canvass the vote. They shall certify to the commissioner and to the company the result of such election. All necessary expenses incurred by the commissioner or by the inspectors appointed by him shall be certified by him to and paid by the company.

(b) Such plan shall be submitted to and approved by the commissioner. The commissioner shall not approve said plan unless in his opinion the rights and interests of all policyholders are preserved. In carrying out said plan a company may acquire any shares of its own stock by gift, bequest or purchase. Any shares thus acquired shall be held in trust for the policyholders of the company as hereinafter provided and shall be assigned and transferred on the books of the company to three (3) trustees who shall hold in trust and shall vote them at all company meetings until all the capital stock of such company is acquired, when the entire capital stock shall be cancelled, and thereupon, the company shall be and become a mutual life insurance company without capital stock. Such trustees shall be appointed and vacancies shall be filled as provided in the plan adopted under the provisions of this section. Such trustees shall file with the company a verified acceptance of their appointments and declarations that they will faithfully discharge their duties as such trustees. All dividends and other sums acquired, after paying the necessary expenses of executing said trust, shall be immediately repaid to said company for the benefit of all who are or may become policyholders of said company and entitled to participate in the profits thereof, and shall be added to and become a part of the surplus earned by said company and be apportionable accordingly as a part of said surplus among said policyholders. [Acts 1935, ch. 162, § 162, p. 588.]

NOTES TO DECISIONS

In General.

Existing insurance companies that complied with Acts 1899, ch. 28, for incorporation

of insurance companies, were authorized to do business in accordance with the provisions of the act and could be sued by an insured.

In General. (Cont'd)

Muller v. State Life Ins. Co., 27 Ind. App. 45,
60 N.E. 958 (1901).

27-1-12-24. Stock operations prohibited. — No life insurance company doing business in this state shall issue in this state, nor permit its agents, officers, or employees to issue or deliver in this state, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities, or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance or for the purchase of an annuity; and no life insurance company shall be authorized to do business in this state which issues or permits its agents, officers, or employees to issue in this state or in any other state or territory agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities, or any special advisory board or other contracts of any kind promising returns and profits as an inducement to insurance or for the purchase of an annuity; and no corporation or stock company acting as agent of a life insurance company nor any of its agents, officers, or employees shall be permitted to sell, agree to offer or sell, or give or offer to give, directly or indirectly, in any manner whatsoever, any share of stock, securities, bonds, or agreement of any form or nature promising returns and profits as an inducement to insurance or for the purchase of an annuity; or in connection therewith. The department may, upon due proof after notice and hearing that any such company or agent thereof has violated any of the provisions of this section, revoke the authority of the company or agent so offending. [Acts 1935, ch. 162, § 163, p. 588.]

Opinions of Attorney General. The plan of issuing insurance with annual endowment coupons attached, if supported by sufficient premium, is not contrary to this act. 1939, p. 113.

That the stock of a company is sold at the same time the insurance is written does not violate the statute prohibiting delivery of

stock as inducement, if the subscriber must pay for the stock. 1939, p. 113.

The requirement that a stock purchaser assign to the company the endowment coupons attached to the policy in the same amount as the cost of the stock violates Acts 1935, ch. 162, § 163. 1939, p. 113.

27-1-12-25. Misrepresentations prohibited. — No life insurance company doing business in this state, and no officer, director or agent thereof shall make, issue or circulate, or cause to be issued or circulated, any estimate, illustration, circular, or statement of any sort misrepresenting the terms of any policy issued or to be issued by it or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall a person make any misrepresentation to any person insured in any company for the purpose of inducing or tending to induce a policyholder in any company to lapse, forfeit, or surrender his insurance. [Acts 1935, ch. 162, § 164, p. 588; 1978, P.L. 2, § 2710.]

Cross References. Conviction of felony or misdemeanor, effect on license, IC 25-1-1.1-1.

27-1-12-26. False statement — Penalty. — A person who knowingly makes any false or fraudulent statement or representation in or with reference to any application for life insurance, or for the purpose of obtaining any fee, commission, money, or benefit from or in any company transacting business under this article, commits a Class A misdemeanor. [Acts 1935, ch. 162, § 165, p. 588; 1978, P.L. 2, § 2711.]

Cross References. Conviction of felony or misdemeanor, effect on license, IC 25-1-1.1-1.

Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

Collateral References. 44 Am. Jur. 2d Insurance § 1620 et seq.

Insurer's tort liability for wrongful or negligent issuance of life policy. 37 A.L.R.4th 972.

Physician's duties and liabilities to person examined pursuant to physician's contract with such person's prospective or actual employer or insurer. 10 A.L.R.3d 1071.

Misrepresentation or misstatement as to insured's marital status, or as to his relationship to beneficiary, as ground for avoiding liability under life insurance policy. 14 A.L.R.3d 931.

Insured's responsibility for false answers

inserted by insurer's agent in application following correct answers by insured, or incorrect answers suggested by agent. 26 A.L.R.3d 6.

Liability of insurance agent for exposure of insurer to liability, because of failure to cancel or reduce risk. 35 A.L.R.3d 792.

Liability of insurance agent, for exposure of insurer to liability, because of failure to fully disclose or assess risk or to report issuance of policy. 35 A.L.R.3d 821.

Liability of insurance agent, for exposure of insurer to liability because of issuance of policy beyond authority or contrary to instructions. 35 A.L.R.3d 905.

Negligent misrepresentation as "accident" or "occurrence" warranting insurance coverage. 58 A.L.R.5th 483.

27-1-12-27, 27-1-12-28. [Repealed.]

Compiler's Notes. These sections, concerning group life insurance policies, were repealed by P.L.254-1985, § 7. For present

similar provisions, see IC 27-1-12-37 — IC 27-1-12-42.

27-1-12-29. Group policies — Exemption from liability for debts — Premiums not exempt — Insurer discharge from liability. — (a) As used in this section, "premium" includes any deposit or contribution.

(b) Except as provided in subsection (c), no policy of group insurance nor the proceeds thereof, when paid to any employee or employees, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied to any legal or equitable process or operation of law, to pay any debt or liability of such employee, or his beneficiary, or any other person who may have a right thereunder, either before or after payment, nor shall the proceeds thereof, where not payable to a named beneficiary, constitute a part of the estate of the employee for the payment of his debts.

(c) A premium paid for an individual life insurance policy that names as a beneficiary, or is legally assigned to, a spouse, child, or relative who is dependent upon the policy owner is not exempt from the claims of the creditors of the policy owner if the premium is paid:

(1) Not more than one (1) year before the date of the filing of a voluntary or involuntary bankruptcy petition by; or

(2) To defraud the creditors of;

the policy owner.

(d) The insurer issuing the policy is discharged from all liability by payment of the proceeds and avails of the policy (as defined in section 14(b) [IC 27-1-12-14(b)] of this chapter) in accordance with the terms of the policy unless, before payment, the insurer has received at the insurer's home office, written notice by or on behalf of a creditor of the policy owner that specifies the amount claimed against the policy owner. [Acts 1935, ch. 162, § 168, p. 588; P.L.253-1995, § 2.]

Cross References. Exemption of proceeds, claims of creditors, IC 27-1-12-21, IC 27-2-5-1, IC 27-8-3-23.

Res Gestae. Status of exemptions in Indiana, 38 (No. 4) Res Gestae 14 (1994).

NOTES TO DECISIONS

Lack of Evidence for Exemption.

Debtor failed to prove he was within class entitled to exemption where there was no evidence in the record which indicated whether disability benefits were proceeds

from a group insurance policy. Perkins v. Koher, 531 N.E.2d 231 (Ind. App. 1988), overruled on other grounds, Brosamer v. Mark, 561 N.E.2d 767 (Ind. 1990).

27-1-12-30. Group policies — Assignments. — No provision of this article or of any other law shall be construed as prohibiting an insured under a group insurance policy, pursuant to agreement among the insured, the group policyholder and the insurer, from making an assignment of all or any part of the incidents of ownership held by the insured under such policy, including specifically but not by way of limitation, any right to designate a beneficiary thereunder and any right to have an individual policy issued in accordance with provisions (8) and (9) of section 28 of this chapter. All such assignments, whether made prior to or subsequent to August 18, 1969, shall be valid for the purpose of vesting in the assignee thereof all the incidents of ownership so assigned, and shall entitle the insurer to deal with the assignee as the owner thereof in accordance with the provisions of said policy, but without prejudice to the insurer on account of any payment made or individual policy issued prior to receipt by the insurer of such notice as may be required by the provisions of the policy. [Acts 1935, ch. 162, § 168.1, as added by Acts 1969, ch. 327, § 2; P.L.252-1985, § 64.]

Compiler's Notes. Section 28 of this chapter (IC 27-1-12-28), referred to in the first sentence, was repealed by P.L.254-1985, § 7.

For present similar provisions, see IC 27-1-12-41.

27-1-12-31. Group policies — Classification. — Any life insurance company may issue life or endowment insurance, with or without annuities, upon the group plan as defined in this chapter, with special rates of premiums less than the usual rates of premiums for such policies, and may value such policies on any accepted table of mortality and interest assumption adopted by the company for that purpose, Provided, That in no case shall such standard be lower than the American Men Table of Mortality (ultimate) with interest assumption at three and one-half percent (3 ½%) in the case of policies issued before the transition date selected by the company pursuant to section 12 [IC 27-1-12-12] of this chapter, nor lower than the

standard prescribed in section 10(2)(g) [IC 27-1-12-10(2)(g)] of this chapter in the case of policies issued on and after such transition date. All policies of group insurance shall be segregated by the company into a separate class, the mortality experience kept separate, and the number of policies, amount of insurance, reserves, premiums, and payments to policyholders thereunder, together with the mortality table and interest assumption adopted by the company shall be reported separately in the company's annual financial statement. [Acts 1935, ch. 162, § 169, p. 588; 1943, ch. 189, § 8, p. 562; P.L.252-1985, § 65.]

Cross References. Annual financial statement, IC 27-1-20-21.

27-1-12-32. Assets, capital or surplus of companies issuing insurance on segregated investment account plan. — A domestic life insurance company shall not issue the type of life insurance or annuity contracts defined and sanctioned under Class 1(c) of IC 27-1-5-1 unless, in addition to fulfilling all other qualifications prescribed by law, it possesses assets of not less than twenty million dollars (\$20,000,000), or combined capital and surplus, in the case of a stock company, or surplus, in the case of a mutual company, of not less than two million five hundred thousand dollars (\$2,500,000). In applying these qualifications to a subsidiary stock life insurance company fulfilling the provisions of IC 27-2-9, the requirements concerning assets, capital, and surplus shall be regarded as fulfilled if the consolidated assets, capital, and surplus of the primary and subsidiary companies equal or exceed the required amounts. [Acts 1935, ch. 162, § 169.1, as added by Acts 1961, ch. 138, § 3; P.L.252-1985, § 66.]

27-1-12-33. Variable life insurance policies — Contents — Regulations. — Variable life insurance policies (contracts providing for immediate or future life insurance benefits as described in Class 1 (c) of IC 1971, 27-1-5-1, to the extent that benefits thereunder are on a variable basis, shall contain a statement to that effect in lieu of stipulating the dollar amount of benefits. Such policies shall also contain such grace period, reinstatement, and nonforfeiture provisions, and shall be subject to the establishment of such reserve liabilities, in accordance with actuarial procedures that recognize the variable nature of benefits provided and any mortality guarantees, as the commissioner shall by regulation prescribe. Upon promulgation of such regulation, variable life insurance policies shall not thereafter be subject to the grace period, nonforfeiture, policy loan, reinstatement, and valuation provisions of the Indiana Insurance Law applicable to or required to be contained in other policies of life insurance. Such regulation shall establish such other requirements with respect to variable life insurance policies, variable life insurance, or any matter incidental thereto, as the commissioner deems to be in the public interest. [IC 27-1-12-33, as added by Acts 1973, P.L. 276, § 1.]

27-1-12-34. [Repealed.]

Compiler's Notes. This section, concerning wholesale, franchise, or employee life insurance policies, was repealed by Acts 1982,

P.L. 6, § 18. For present similar provisions, see IC 27-1-12-34.1.

27-1-12-34.1. Wholesale, franchise or employee life insurance policies — Required provisions. — (a) No policy of wholesale, franchise, or employee life insurance, as defined in this section, shall be issued or delivered in this state unless it conforms to the requirements of this section.

(b) Wholesale, franchise, or employee life insurance is defined as a term life insurance plan under which a number of individual term insurance policies are issued at special rates to a selected group. A special rate is any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

(c) Wholesale, franchise, or employee life insurance may be issued to:

(1) Three (3) or more employees of any corporation, copartnership, or individual employer, or any governmental corporation, agency, or department thereof; or

(2) Ten (10) or more members, employees, or employees of members of any trade or professional association, or of a labor union, or of any association of members in the same or related occupations, profession, or industry having been in existence for at least two (2) years, where such association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance. Evidence of individual insurability satisfactory to the insurer may be required by the insurer as a condition to coverage.

(d) The premiums on such policies may be paid to the insurer periodically by the employer, with or without payroll deductions, or by the insured or association or union for its members, or by some designated person acting on behalf of such employer, association, or union. The term "employees" as used in this chapter refers to officers, managers, employees, and retired employees of the employer and the individual proprietor or partners if the employer is an individual or partnership.

(e) Each policy issued under this section shall provide that, if the insured person ceases to qualify for the policy he may convert the policy, without evidence of insurability, to an individual policy of life insurance, provided application for such conversion is made within thirty-one (31) days of the date the insured person ceases to qualify for coverage under this section. The individual policy shall be issued on any one (1) of the forms, except term insurance, then customarily issued by the insurer at the age and in the amount applied for. The premium on this individual policy is to be at the insurer's then customary rate applicable to the form and amount of such individual policy, the class of risk to which the insured person then belongs, and his age attained on the effective date of such individual policy. [IC 27-1-12-34.1, as added by Acts 1982, P.L. 6, § 17.]

27-1-12-35. Interest accrual on unpaid insurance policy proceeds.

— (a) Any resident of this state who becomes entitled to receive payment of an obligation in cash under the terms of a policy of individual life insurance

issued in this state, including any death benefit riders attached thereto, endowment insurance or an individual annuity contract, shall be entitled to receive payment of interest from the insuring company if any payment is not received by such resident within thirty (30) days after the event giving rise to the obligation, or within thirty (30) days after the scheduled date of payment as the case may be. Interest payable shall be calculated from the date of the event or the scheduled date of payment. However, any interest awarded by a court shall be in lieu of that provided in this section.

(b) The rate of interest payable pursuant to this section shall be not less than that rate, as determined from time to time by the insuring company, applicable to proceeds of life insurance left on deposit with the insuring company and subject to withdrawal on demand.

(c) For the purposes of this section, payment shall be deemed to have been received by a resident when manually delivered by an agent or representative of the insuring company or when deposited by the insuring company in the United States mails, postage prepaid, and directed to the resident at his last known address as evidenced by the business records of the insuring company. [IC 27-1-12-35, as added by Acts 1978, P.L. 8, § 15.]

NOTES TO DECISIONS

Applicability.

This section expressly applies to proceeds payable under individual life insurance, not

under a group plan. *Estate of Pierson v. Pierson*, 738 F. Supp. 1230 (S.D. Ind. 1990).

27-1-12-36. [Repealed.]

Compiler's Notes. This section, concerning extension of group life insurance policies to family members and dependents, was re-

pealed by P.L.254-1985, § 7. For present similar provisions, see IC 27-1-12-40.

27-1-12-37. Group life insurance policies — Qualified groups and insureds. — Except as provided in section 38 [IC 27-1-12-38] of this chapter, no policy of group life insurance may be delivered in Indiana unless it conforms to one (1) of the following descriptions:

(1) A policy issued to an employer or to the trustees of a fund established by an employer (which employer or trustees must be deemed the policyholder) to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(A) The employees eligible for insurance under the policy must be all of the employees of the employer, or all of any class or classes of employees. The policy may provide that the term "employees" includes the employees of one (1) or more subsidiary corporations and the employees, individual proprietors, and partners of one (1) or more affiliated corporations, limited liability companies, proprietorships, or partnerships if the business of the employer and of the affiliated corporations, proprietorships, limited liability companies, or partnerships is under common control. The policy may provide that the term "employees" includes the individual proprietor or partners if the

employer is an individual proprietorship or partnership. The policy may provide that the term "employees" may include retired employees, former employees, and directors of a corporate employer. A policy issued to insure the employees of a public body may provide that the term "employees" includes elected or appointed officials.

(B) The premium for the policy must be paid either from the employer's funds, from funds contributed by the insured employees, or from both sources of funds. Except as provided in clause (C), a policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, except those who reject the coverage in writing.

(C) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(2) A policy issued to a creditor or its parent holding company or to a trustee or trustees or agent designated by two (2) or more creditors (which creditor, holding company, affiliate, trustee, trustees, or agent must be deemed the policyholder) to insure debtors of the creditor, or creditors, subject to the following requirements:

(A) The debtors eligible for insurance under the policy must be all of the debtors of the creditor or creditors, or all of any class or classes of debtors. The policy may provide that the term "debtors" includes:

(i) Borrowers of money or purchasers or lessees of goods, services, or property for which payment is arranged through a credit transaction;

(ii) The debtors of one (1) or more subsidiary corporations; and

(iii) The debtors of one (1) or more affiliated corporations, proprietorships, limited liability companies, or partnerships if the business of the policyholder and of the affiliated corporations, proprietorships, limited liability companies, or partnerships is under common control.

(B) The premium for the policy must be paid either from the creditor's funds, from charges collected from the insured debtors, or from both sources of funds. Except as provided in clause (C), a policy on which no part of the premium is to be derived from the funds contributed by insured debtors specifically for their insurance must insure all eligible debtors.

(C) An insurer may exclude any debtors as to whom evidence of individual insurability is not satisfactory to the insurer.

(D) The amount of the insurance on the life of any debtor may at no time exceed the greater of the scheduled or actual amount of unpaid indebtedness to the creditor.

(E) The insurance may be payable to the creditor or any successor to the right, title, and interest of the creditor. Each payment under this clause must reduce or extinguish the unpaid indebtedness of the debtor to the extent of the payment, and any excess of the insurance must be payable to the estate of the insured.

(F) Notwithstanding clauses (A) through (E), insurance on agricultural credit transaction commitments may be written up to the

amount of the loan commitment on a nondecreasing or level term plan, and insurance on educational credit transaction commitments may be written up to the amount of the loan commitment less the amount of any repayments made on the loan.

(3) A policy issued to a labor union or similar employee organization (which organization must be deemed to be the policyholder) to insure members of the union or organization for the benefit of persons other than the union or organization or any of its officials, representatives, or agents, subject to the following requirements:

(A) The members eligible for insurance under the policy must be all of the members of the union or organization, or all of any class or classes of members.

(B) The premium for the policy must be paid either from funds of the union or organization, from funds contributed by the insured members specifically for their insurance, or from both sources of funds. Except as provided in clause (C), a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members, except those who reject the coverage in writing.

(C) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(4) A policy issued to a trust or to one (1) or more trustees of a fund established or adopted by two (2) or more employers, or by one (1) or more labor unions or similar employee organizations, or by one (1) or more employers and one (1) or more labor unions or similar employee organizations (which trust or trustees must be deemed the policyholder) to insure employees of the employers or members of the unions or organizations for the benefit of persons other than the employers or the unions or organizations, subject to the following requirements:

(A) The persons eligible for insurance must be all of the employees of the employers or all of the members of the unions or organizations, or all of any class or classes of employees or members. The policy may provide that the term "employees" includes the employees of one (1) or more subsidiary corporations and the employees, individual proprietors, and partners of one (1) or more affiliated corporations, proprietorships, limited liability companies, or partnerships if the business of the employer and of the affiliated corporations, proprietorships, limited liability companies, or partnerships is under common control. The policy may provide that the term "employees" includes the individual proprietor or partners if the employer is an individual proprietorship or partnership. The policy may provide that the term "employees" includes retired employees, former employees, and directors of a corporate employer. The policy may provide that the term "employees" includes the trustees or their employees, or both, if their duties are principally connected with the trusteeship.

(B) The premium for the policy must be paid from funds contributed by the employer or employers of the insured persons, by the union or

unions or similar employee organizations, or by both, from funds contributed by the insured persons, or from both the insured persons and one (1) or more employers, unions, or similar employee organizations. Except as provided in clause (C), a policy on which no part of the premium is to be derived from funds contributed by the insured persons, specifically for their insurance must insure all eligible persons, except those who reject the coverage in writing.

(C) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(5) A policy issued to an association, a trust, or one (1) or more trustees of a fund established, created, or maintained for the benefit of members of one (1) or more associations. The association or associations must have at the outset a minimum of one hundred (100) persons; must have been organized and maintained in good faith for purposes other than that of obtaining insurance; must have been in active existence for at least two (2) years; and must have a constitution and bylaws that provide that the association or associations hold regular meetings not less than annually to further purposes of the members, that, except for credit unions, the association or associations collect dues or solicit contributions from members, and that the members have voting privileges and representation on the governing board and committees. The policy must be subject to the following requirements:

(A) The policy may insure members or employees of the association or associations, employees of members, one (1) or more of the preceding, or all of any class or classes of members, employees, or employees of members for the benefit of persons other than the employee's employer.

(B) The premium for the policy must be paid from funds contributed by the association or associations, by employer members, or by both, from funds contributed by the covered persons, or from both the covered persons and the association, associations, or employer members.

(C) Except as provided in clause (D), a policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for the insurance must insure all eligible persons, except those who reject such coverage in writing.

(D) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(6) A policy issued to a credit union or to one (1) or more trustees or an agent designated by two (2) or more credit unions (which credit union, trustee, trustees, or agent must be deemed the policyholder) to insure members of the credit union or credit unions for the benefit of persons other than the credit union or credit unions, trustee, trustees, or agent, or any of their officials, subject to the following requirements:

(A) The members eligible for insurance must be all of the members of the credit union or credit unions, or all of any class or classes of members.

(B) The premium for the policy shall be paid by the policyholder from the credit union's funds and, except as provided in clause (C), must insure all eligible members.

(C) An insurer may exclude or limit the coverage on any member as to whom evidence of individual insurability is not satisfactory to the insurer. [P.L.254-1985, § 1; P.L.19-1986, § 46; P.L.8-1993, § 413.]

27-1-12-38. Group life insurance policies — Public policy considerations — Out-of-state policies — Payment of premiums — Denial of coverage for individual uninsurability. — (a) Group life insurance offered to a resident of Indiana under a group life insurance policy issued to a group other than one described in section 37(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), or (6)(A) [IC 27-1-12-37(1)(A), (2)(A), (3)(A), (4)(A), (5)(A), or (6)(A)] of this chapter is subject to the requirements set forth in subsections (b) through (e).

(b) A group life insurance policy described in subsection (a) may not be delivered in Indiana unless the commissioner finds that:

- (1) The issuance of the policy is not contrary to the best interest of the public;
- (2) The issuance of the policy would result in economies of acquisition or administration; and
- (3) The benefits of the policy are reasonable in relation to the premiums charged.

(c) Group life insurance coverage may not be offered in Indiana by an insurer under a policy that was issued in another state unless Indiana or another state having requirements substantially similar to those contained in subsection (b) has made a determination that the policy meets those requirements.

(d) The premium for a policy described in subsection (a) must be paid either from the policyholder's funds, from funds contributed by the covered persons, or from both sources of funds.

(e) An insurer may exclude or limit the coverage under a policy described in subsection (a) on any person as to whom evidence of individual insurability is not satisfactory to the insurer. [P.L.254-1985, § 2; P.L.268-1987, § 1.]

Collateral References. Estoppel of, or assert defense of lack of insurable interest. 86 waiver by, issuer of life insurance policy to A.L.R.4th 828.

27-1-12-39. Group life insurance policies — Notice of compensation to sponsoring or endorsing entity. — (a) As used in this section, "direct response solicitation" means a solicitation through a sponsoring or endorsing entity through the mails, telephone, or other mass communications media.

(b) As used in this section, "sponsoring or endorsing entity" means an organization that has arranged for the offering of a program of insurance in a manner that communicates that:

- (1) Eligibility for participation in the program is dependent upon affiliation with the organization; or
- (2) The organization encourages participation in the program.

(c) This section applies to any program of insurance that, if issued on a group basis, would not conform to one (1) of the descriptions in section 37 [IC 27-1-12-37] of this chapter.

(d) If compensation of any kind will or may be paid, under a program of insurance described in subsection (c), to:

- (1) A policyholder or sponsoring or endorsing entity in the case of a group policy; or
- (2) A sponsoring or endorsing entity in the case of individual, blanket, or franchise policies marketed by means of direct response solicitation; the insurer shall cause to be distributed to prospective insureds under the program a written notice that compensation will or may be paid under the program as indicated in subdivision (1) or (2).

(e) The notice required under subsection (d) shall be given:

- (1) Whether the compensation that will or may be paid is direct or indirect; and
- (2) Whether the compensation is to be paid to or retained by:
 - (A) The policyholder or sponsoring or endorsing entity; or
 - (B) A third party, at the direction of the policyholder or sponsoring or endorsing entity, or any entity affiliated with the sponsoring or endorsing entity by way of ownership, contract, or employment.

(f) The notice required under subsection (d) shall be placed on or accompany any application or enrollment form provided prospective insureds. [P.L.254-1985, § 3.]

27-1-12-40. Group life insurance policies — Insuring of family members or dependents. — Except for a policy that conforms to the description in section 37(2) [IC 27-1-12-37(2)] of this chapter, a group life insurance policy may be extended to insure the employees or members, or any class or classes of employees or members, against loss due to the death of their spouses and dependent children, subject to the following:

- (1) The premium for the insurance must be paid either from funds contributed by the employer, union, association, or other person to whom the policy has been issued, from funds contributed by the covered persons, or from both sources of funds. Except as provided in subdivision (2), a policy on which no part of the premium for the spouse's and dependent child's coverage is to be derived from funds contributed by the covered persons must insure all eligible employees or members, or any class or classes of eligible employees or members, with respect to their spouses and dependent children.
- (2) An insurer may exclude or limit the coverage on any spouse or dependent child as to whom evidence of individual insurability is not satisfactory to the insurer.
- (3) The amounts of insurance for any covered spouse or dependent child under the policy may not exceed fifty percent (50%) of the amount of insurance for which the employee or member is insured. [P.L.254-1985, § 4.]

27-1-12-41. Group life insurance policies — Required provisions.

— (a) A policy of group life insurance may not be delivered in Indiana unless it contains in substance:

- (1) The provisions described in subsection (b); or
- (2) Provisions that, in the opinion of the commissioner, are:
 - (A) More favorable to the persons insured; or
 - (B) At least as favorable to the persons insured and more favorable to the policyholder;

than the provisions set forth in subsection (b).

(b) The provisions referred to in subsection (a)(1) are as follows:

(1) A provision that the policyholder is entitled to a grace period of thirty-one (31) days for the payment of any premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder has given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder is liable to the insurer for the payment of a pro rata premium for the time the policy was in force during the grace period.

(2) A provision that the validity of the policy may not be contested, except for nonpayment of premiums, after the policy has been in force for two (2) years after its date of issue, and that no statement made by a person insured under the policy relating to the person's insurability may be used in contesting the validity of the insurance with respect to which the statement was made, unless:

(A) The insurance has not been in force for a period of two (2) years or longer during the person's lifetime; or

(B) The statement is contained in a written instrument signed by the insured person.

However, a provision under this subdivision may not preclude the assertion at any time of defenses based upon provisions in the policy that relate to eligibility for coverage.

(3) A provision that a copy of the application, if any, of the policyholder must be attached to the policy when issued, that all statements made by the policyholder or by the persons insured are to be deemed representations and not warranties, and that no statement made by any person insured may be used in any contest unless a copy of the instrument containing the statement is or has been furnished to the insured person or, in the event of death or incapacity of the insured person, to the insured person's beneficiary or personal representative.

(4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the person's coverage.

(5) A provision specifying an equitable adjustment of premiums, benefits, or both to be made in the event the age of a person insured has been misstated. A provision under this subdivision must contain a clear statement of the method of adjustment to be made.

(6) A provision that any sum becoming due by reason of the death of the person insured must be payable to the beneficiary designated by the

person insured. However, if a policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms, subject to the provisions of the policy in the event there is no designated beneficiary, as to all or any part of the sum, living at the death of the person insured, and subject to any right reserved by the insurer in the policy and set forth in the certificate to pay at its option a part of the sum not exceeding two thousand dollars (\$2,000) to any person appearing to the insurer to be equitably entitled to that payment by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured.

(7) A provision that the insurer will issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement that:

(A) Explains the insurance protection to which the person insured is entitled;

(B) Indicates to whom the insurance benefits are payable;

(C) Explains any dependent's coverage included in the certificate; and

(D) Sets forth the rights and conditions that apply to the person under subdivisions (8), (9), (10), and (11).

(8) A provision that if the insurance, or any portion of it, on a person covered under the policy, or on the dependent of a person covered, ceases because of termination of employment or termination of membership in the class or classes eligible for coverage under the policy, the person or dependent is entitled, without evidence of insurability, to an individual policy of life insurance issued to the person or dependent by the insurer without disability or other supplementary benefits, Provided That an application for the individual policy is made and that the first premium is paid to the insurer within thirty-one (31) days after the termination, and Provided further That:

(A) The individual policy must, at the option of the person or dependent, be on any one (1) of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance;

(B) The individual policy must be in an amount not in excess of the amount of life insurance that ceases because of the termination, less the amount of any life insurance for which the person or dependent becomes eligible under the same policy or any other group policy within thirty-one (31) days after the termination (however, any amount of insurance that has matured on or before the date of the termination as an endowment payable to the person insured, whether in one (1) sum, in installments, or in the form of an annuity, may not, for the purposes of this clause, be included in the amount of insurance that is considered to cease because of the termination); and

(C) The premium on the individual policy must be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which the person or dependent then belongs, and to the individual age attained by the person or dependent on the effective date of the individual policy.

Subject to the conditions set forth in this subdivision, the conversion privilege created by this subdivision must be available to a surviving dependent of a person covered under a group policy, with respect to the coverage under the group policy that terminates by reason of the death of the person covered, and to the dependent of an employee or member after termination of the coverage of the dependent because the dependent ceases to be a qualified family member under the group policy, while the employee or member remains insured under the group policy. (9) A provision that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured under the policy at the date of the termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five (5) years before the termination date, is entitled to have issued by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided in subdivision (8), except that the group policy may provide that the amount of the individual policy may not exceed the lesser of:

(A) The amount of the person's life insurance protection that is ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which the person is eligible or becomes eligible under a group policy issued or reinstated by the same insurer or another insurer within thirty-one (31) days after the termination; or

(B) Ten thousand dollars (\$10,000).

(10) A provision that if a person insured under the group policy, or the insured dependent of a covered person, dies during the period within which the covered person or dependent would have been entitled to have an individual policy issued under subdivision (8) or (9) or before such an individual policy becomes effective, the amount of life insurance that the covered person or dependent would have been entitled to have issued under an individual policy is payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium for the individual policy has been made.

(11) If active employment is a condition of insurance, a provision that an insured may continue coverage during the insured's total disability by timely payment to the policyholder of that portion, if any, of the premium that would have been required for the insured had total disability not occurred. The continuation of coverage under this subdivision on a premium paying basis must extend for a period of six (6) months from the date on which the total disability started, but not beyond the earlier of:

(A) The date of approval by the insurer of continuation of the coverage under any disability provision that the group insurance policy may contain; or

(B) The date of discontinuance of the group insurance policy.

(12) In the case of a policy insuring the lives of debtors, a provision that the insurer will furnish to the policyholder, for delivery to each debtor insured under the policy, a certificate of insurance describing the

coverage and specifying that the death benefit will first be applied to reduce or extinguish the indebtedness.

(c) Subsections (b)(6) through (b)(11) do not apply to policies insuring the lives of debtors. The standard provisions required under IC 27-1-12 for individual life insurance policies do not apply to group life insurance policies.

(d) If a group life insurance policy is on a plan of insurance other than the group plan, it must contain a nonforfeiture provision that, in the opinion of the commissioner, is equitable to the insured persons and to the policyholder. However, group life insurance policies need not contain the same nonforfeiture provisions as are required for individual life insurance policies under IC 27-1-12. [P.L.254-1985, § 5.]

Cited: *McCart v. Chief Executive Officer in Charge*, 652 N.E.2d 80 (Ind. App. 1995).

NOTES TO DECISIONS

Beneficiaries.

Knowledge was imputed to employee that insurer and employer agreed to use group insurance enrollment cards of another insurance company to designate the current beneficiaries of employees provided group life insurance benefits through their employer;

therefore, employee's wife, as the designated beneficiary on employee's insurance enrollment card, was properly awarded the proceeds of group life insurance policy. *Distler v. Horace Mann Life Ins. Co.*, 644 N.E.2d 918 (Ind. App. 1994).

Collateral References. Policy provision limiting time within which action may be brought on the policy as applicable to tort

action by insured against insurer. 66 A.L.R.4th 859.

27-1-12-42. Group life insurance policies — Notice of right to convert to individual policy. — (a) If a person who:

(1) Is insured under a group life insurance policy delivered in Indiana; and

(2) Is entitled under the terms of the group policy to have an individual policy of life insurance issued without evidence of insurability upon the making of application and payment of the first premium within the period specified in the policy;

is not given notice of the existence of the conversion right referred to in subdivision (2) at least fifteen (15) days before the expiration of the period during which the application and payment of the first premium must be made under the terms of the policy, the person has an additional period within which to exercise the conversion right.

(b) The additional period created under subsection (a) for exercise of a right of conversion expires fifteen (15) days after the person is given notice of the conversion right. However, irrespective of the date on which notice is given or of the absence of any notice, the additional period may not extend beyond sixty (60) days after the expiration date of the period within which application and payment of the first premium were to be made under the terms of the policy.

(c) For purposes of this section, notice of the right of conversion may be given to the person in a writing:

- (1) Presented to the person;
- (2) Mailed by the policyholder to the last known address of the person;
- or
- (3) Mailed by the insurer to the last known address of the person as furnished by the policyholder. [P.L.254-1985, § 6.]

Cited: *McCart v. Chief Executive Officer in Charge*, 652 N.E.2d 80 (Ind. App. 1995).

27-1-12-43. Life insurance policies — Provision for return of policy. — (a) As used in this section, “life insurance policy” means:

- (1) An individual life insurance policy other than a credit life insurance policy; or
- (2) An individual policy of variable life insurance;

that is sold after June 30, 1994.

(b) No life insurance policy may be issued in Indiana or issued for delivery in Indiana unless it contains a provision allowing the policyholder to return the policy to:

- (1) The insurer;
- (2) The agent through whom the policy was purchased; or
- (3) Any agent of the insurer;

within ten (10) days after the policy is received by the policyholder for a full refund of all money paid by the policyholder.

(c) Each life insurance policy must have prominently printed on its first page a notice setting forth in substance the provisions of subsection (b). [P.L.116-1994, § 25.]

CHAPTER 12.3

INTEREST RATES ON INSURANCE POLICY LOANS

SECTION.

- 27-1-12.3-1. Definitions.
- 27-1-12.3-2. Policies issued after August 31, 1983 — Contents required.
- 27-1-12.3-3. Variable interest rate loans — Notification to policyholder concerning rate of interest.
- 27-1-12.3-4. Determination of loan value — Prohibition against termina-

SECTION.

- tion of policy during policy year as sole result of interest rate increase and failure of payment of increase.
- 27-1-12.3-5. Applicability of other laws.
- 27-1-12.3-6. Contracts issued before September 1, 1981 excepted from provisions of this chapter.

27-1-12.3-1. Definitions. — As used in this chapter:

(a) “Published monthly average” means:

- (1) Moody’s corporate bond yield average-monthly average corporates as published by Moody’s Investors Service, Inc. or any successor thereto; or
- (2) In the event that the Moody’s corporate bond yield average-monthly average corporates is no longer published, a substantially similar average, established by regulation issued by the insurance commissioner.

- (b) "Insurer" means an entity issuing a policy.
- (c) "Policy loan" means:
 - (1) A loan secured by a policy of life insurance under IC 27-1-12-6(8) and IC 27-1-12-19;
 - (2) Any premium loan made under a policy to pay one or more premiums that were not paid to the life insurer as they became due; or
 - (3) A loan secured by any certificate or annuity contract that provides loans on the security of the certificate or annuity contract.
- (d) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer.
- (e) "Policy" means:
 - (1) A life insurance policy;
 - (2) A certificate issued by a fraternal benefit society; or
 - (3) An annuity contract;that provides for policy loans.
- (f) "Rate of interest" or "interest rate" means the rate of interest on policy loans, including the rate of interest charged on reinstatement of policy loans for the period during and after any lapse. [IC 27-1-12.3-1, as added by Acts 1981, P.L. 240, § 1.]

27-1-12.3-2. Policies issued after August 31, 1983 — Contents required. — Policies issued after August 31, 1983, must contain a provision for policy loan interest rates permitting:

- (1) A maximum interest rate of not more than eight percent (8%) per year; or
- (2) An adjustable interest rate established from time to time as follows:
 - (A) The maximum rate of interest shall be the greater of the rate determined by the published monthly average for the calendar month ending two (2) months before the date on which the interest rate is determined or the rate used to compute the cash surrender values under the policy during the applicable loan period as required in IC 27-1-12-7(5), plus one percent (1%) per year.
 - (B) The maximum interest rate for each policy shall be determined at regular intervals at least once every twelve (12) months, but not more frequently than once every three (3) months. The interval must be specified in the policy.
 - (C) As of the time of the periodic maximum interest determination, the interest rate on the policy loan will be fixed, not below the minimum rate, as follows:
 - (i) If the maximum rate is greater than the last previous establishment or change of the interest rate, the interest rate may at the option of the insurer be increased to any rate not in excess of the maximum rate.
 - (ii) If the maximum rate is less than the last previous establishment or change of the interest rate, the interest rate will be decreased to the new maximum rate.

(iii) Notwithstanding subparts (i) and (ii) of this clause (C), no change in interest rate which is less than one-half percent ($\frac{1}{2}\%$) will be made.

(D) The most recently determined interest rate on a loan made on any policy will apply to the unpaid amount of all policy loans previously made thereon. [IC 27-1-12.3-2, as added by Acts 1981, P.L. 240, § 1; P.L. 260-1983, § 6.]

27-1-12.3-3. Variable interest rate loans — Notification to policyholder concerning rate of interest. — With respect to variable interest rate loans under section 2 [IC 27-1-12.3-2] of this chapter, the insurer shall:

(1) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(2) Notify the policyholder as soon as is reasonably practical after a premium loan is made of the initial rate of interest on the loan, except that notice need not be given the policyholder when a further premium loan is added other than the notice required by subdivision (3) of this section;

(3) Send to the policyholder reasonable advance notice of any increase in the loan interest rate; and

(4) Include in the notices required by this section, whether the rate is fixed or variable and, if variable, the permitted frequency of change. [IC 27-1-12.3-3, as added by Acts 1981, P.L. 240, § 1.]

27-1-12.3-4. Determination of loan value — Prohibition against termination of policy during policy year as sole result of interest rate increase and failure of payment of increase. — (a) The loan value of a policy shall be determined in accordance with IC 27-1-12-6(8); however, a policy shall not terminate in a policy year as the sole result of an increase in the interest rate and the failure of the policyholder to pay the amount of interest required by that increase during that policy year. In such event, the insurer shall maintain coverage during that policy year until the time at which the policy would otherwise have terminated if there had been no change during that policy year. [IC 27-1-12.3-4, as added by Acts 1981, P.L. 240, § 1.]

Compiler's Notes. As enacted, this section was designated as subsection (a) with no other subsection designations.

The reference to IC 27-1-12-6(8) in the first sentence probably should be to IC 27-1-12-6(a)(8).

27-1-12.3-5. Applicability of other laws. — No statute other than this chapter applies to policy loan interest rates, except to the extent that a statute enacted after the 1981 regular session of the Indiana general assembly specifically provides otherwise. [IC 27-1-12.3-5, as added by Acts 1981, P.L. 240, § 1.]

27-1-12.3-6. Contracts issued before September 1, 1981 excepted from provisions of this chapter. — The provisions of this chapter shall

not apply to any insurance contract issued before September 1, 1981, unless the policyholder agrees in writing to the applicability of such provisions. [IC 27-1-12.3-6, as added by Acts 1981, P.L. 240, § 1.]

CHAPTER 12.4

CHARITABLE GIFT ANNUITIES

- SECTION.
- 27-1-12.4-1. “Internal Revenue Code” defined.
- 27-1-12.4-2. Annuities not subject to regulation by department.

27-1-12.4-1. “Internal Revenue Code” defined. — As used in this chapter, “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended and in effect on January 1, 1994. [P.L.131-1994, § 1.]

Compiler’s Notes. The Internal Revenue Code of 1986, referred to above, may be found at 26 U.S.C. § 1 et seq.

27-1-12.4-2. Annuities not subject to regulation by department. — An annuity is not subject to regulation by the department under IC 27 if the annuity:

- (1) Is established under a transaction that, for federal income tax purposes, is treated:
- (A) In part as a charitable contribution under Section 170 of the Internal Revenue Code; and
- (B) In part as an investment in an annuity contract under Section 72 of the Internal Revenue Code; and
- (2) Meets the requirements for exclusion from the definition of “acquisition indebtedness” under Section 514(c)(5) of the Internal Revenue Code. [P.L.131-1994, § 1.]

Compiler’s Notes. Section 170 of the Internal Revenue Code may be found at 26 U.S.C. § 170; Section 72 of the Internal Revenue Code may be found at 26 U.S.C. § 72; Section 514 of the Internal Revenue Code may be found at 26 U.S.C. § 514.

CHAPTER 12.5

ANNUITY CONTRACTS — NONFORFEITURE PROVISIONS

- | | |
|---|---|
| SECTION. | SECTION. |
| 27-1-12.5-1. “Annuity contract” defined. | der without optional maturity dates. |
| 27-1-12.5-2. Required contract provisions. | 27-1-12.5-8. Contract without cash surrender or death benefits. |
| 27-1-12.5-3. Minimum nonforfeiture amounts. | 27-1-12.5-9. Contract with fixed schedule considerations — Calculation of benefits. |
| 27-1-12.5-4. Present value. | 27-1-12.5-10. Contracts with annuity and life insurance benefits. |
| 27-1-12.5-5. Cash surrender benefits. | |
| 27-1-12.5-6. Present value without cash surrender benefits. | |
| 27-1-12.5-7. Present value and cash surren- | |

27-1-12.5-1. "Annuity contract" defined. — The term "annuity contract" as used in this chapter means:

- (1) Any individual deferred annuity contract; and
- (2) Any group annuity contract delivered or issued in connection with a plan providing individual retirement accounts or individual annuities under Section 408 of the Internal Revenue Code;

but does not refer to any other group annuity or to any reinsurance, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, and any annuity contract delivered outside this state through an agent or other representative of the company issuing the contract. [IC 27-1-12.5-1, as added by Acts 1977, P.L. 286, § 1; P.L.2-1987, § 36.]

Compiler's Notes. Section 408 of the Internal Revenue Code, referred to in subdivision (2), may be found at 26 U.S.C. § 408.

27-1-12.5-2. Required contract provisions. — (a) No annuity contract shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions, which in the opinion of the insurance commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

- (1) Upon cessation of payment of considerations under an annuity contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in sections 4, 5, 6, 7, and 9 [IC 27-1-12.5-4, IC 27-1-12.5-5, IC 27-1-12.5-6, IC 27-1-12.5-7, and IC 27-1-12.5-9] of this chapter.
- (2) If an annuity contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in sections 4, 5, 7, and 9 [IC 27-1-12.5-4, IC 27-1-12.5-5, IC 27-1-12.5-7, and IC 27-1-12.5-9] of this chapter. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract.
- (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.
- (4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the annuity contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

(b) Notwithstanding the requirements of this chapter, any annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20.00) monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract. [IC 27-1-12.5-2, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-3. Minimum nonforfeiture amounts. — (a) The minimum values as specified in sections 4, 5, 6, 7, and 9 [IC 27-1-12.5-4, IC 27-1-12.5-5, IC 27-1-12.5-6, IC 27-1-12.5-7 and IC 27-1-12.5-9] of this chapter of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(b) With respect to any annuity contract providing for flexible considerations, the minimum nonforfeiture amounts at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three percent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

- (1) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent (3%) per annum, and
- (2) The amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less than an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent (65%) of the net consideration for the first contract year and eighty-seven and one-half percent (87.5%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two (2) times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).

(c) With respect to any annuity contract providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be

defined as for contracts with flexible considerations which are paid annually with two (2) exceptions:

- (1) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent (65%) of the net consideration for the first contract year plus twenty-two and one-half percent (22.5%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.
- (2) The annual contract charge shall be the lesser of (i) thirty dollars (\$30.00) or (ii) ten percent (10%) of the gross annual consideration.
- (d) With respect to any annuity contract providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00). [IC 27-1-12.5-3, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-4. Present value. — Any paid-up annuity benefit available under any annuity contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract. [IC 27-1-12.5-4, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-5. Cash surrender benefits. — If an annuity contract provides cash surrender benefits, the amount of these benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such an annuity contract shall be at least equal to the cash surrender benefit. [IC 27-1-12.5-5, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-6. Present value without cash surrender benefits. — If an annuity contract does not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion

of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. The present values for an annuity contract, not providing any death benefits prior to the commencement of any annuity payments, shall be calculated on the basis of the interest rate and mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time. [IC 27-1-12.5-6, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-7. Present value and cash surrender without optional maturity dates. — For the purpose of determining the benefits calculated under sections 5 and 6 [IC 27-1-12.5-5 and IC 27-1-12.5-6], in the case of an annuity contract under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later. [IC 27-1-12.5-7, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-8. Contract without cash surrender or death benefits. — Any annuity contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided. [IC 27-1-12.5-8, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-9. Contract with fixed schedule considerations — Calculation of benefits. — Under any annuity contract with fixed scheduled considerations, any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs. [IC 27-1-12.5-9, as added by Acts 1977, P.L. 286, § 1.]

27-1-12.5-10. Contracts with annuity and life insurance benefits. — If any annuity contract provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for

the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of sections 4, 5, 6, 7, and 9 [IC 27-1-12.5-4, IC 27-1-12.5-5, IC 27-1-12.5-6, IC 27-1-12.5-7, and IC 27-1-12.5-9], additional benefits payable (i) in the event of total and permanent disability, (ii) as reversionary annuity or deferred reversionary annuity benefits, or (iii) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this chapter. The inclusion of such additional benefits shall not be required in any paid-up benefits unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits. [IC 27-1-12.5-10, as added by Acts 1977, P.L. 286, § 1.]

CHAPTER 12.6

ANNUITY CONTRACTS — GENERAL PROVISIONS

SECTION.	SECTION.
27-1-12.6-1. Applicability of chapter.	der or death benefits — Disclosures.
27-1-12.6-2. Method of calculating nonforfeiture benefits.	27-1-12.6-7. Rules and regulations.
27-1-12.6-3. Cash surrender value table.	27-1-12.6-8. Filing of contract forms — Notice of noncompliance.
27-1-12.6-4. Automatic premium payments from nonforfeiture values prohibited.	27-1-12.6-9. Deceptive or misleading contracts without cash surrender value.
27-1-12.6-5. Initial cancellation provision.	
27-1-12.6-6. Contracts without cash surren-	

27-1-12.6-1. Applicability of chapter. — Each annuity contract, as defined in IC 27-1-12.5, whether in a separate instrument, or in a separate provision in or as a rider to a life insurance policy, shall be subject to the limitations and disclosures set out in this chapter. [IC 27-1-12.6-1, as added by Acts 1977, P.L. 286, § 2.]

27-1-12.6-2. Method of calculating nonforfeiture benefits. — Each annuity contract shall contain a brief and general statement of the method to be used in calculating the paid-up nonforfeiture benefits available under the contract. [IC 27-1-12.6-2, as added by Acts 1977, P.L. 286, § 2.]

27-1-12.6-3. Cash surrender value table. — Each annuity contract providing for single or fixed scheduled considerations shall contain a table showing the cash surrender value, if any, available under the contract on each contract anniversary date, during the first twenty (20) contract years or during the term of the contract, whichever is shorter. Such table shall be calculated upon the assumptions that there are no additional amounts credited by the company to the contract, that there is no indebtedness to the company on account of or secured by the contract and that there are no prior withdrawals from or partial surrender of the contract. [IC 27-1-12.6-3, as added by Acts 1977, P.L. 286, § 2.]

27-1-12.6-4. Automatic premium payments from nonforfeiture values prohibited. — An annuity contract shall not contain a provision wherein life insurance premium or annuity consideration payments may be automatically made by the company by withdrawing from or placing a loan against annuity nonforfeiture values provided under the contract. [IC 27-1-12.6-4, as added by Acts 1977, P.L. 286, § 2.]

27-1-12.6-5. Initial cancellation provision. — Each annuity contract shall contain a provision giving the purchaser an unrestricted right to return the contract to the company or to the agent through whom it was purchased, on or before the tenth day after it is received by the purchaser, such return entitling the purchaser to a return of the value of a variable annuity account or the monies paid by the purchaser to a fixed account in connection with the issuance of the contract. This provision shall be conspicuously placed on the face of the contract. This provision does not apply to contracts issued in connection with a pension, annuity, or profit-sharing plan qualified or exempt under Sections 401, 403, 404, or 501 of the Internal Revenue Code, if participation in the plan is a condition of employment. [IC 27-1-12.6-5, as added by Acts 1977, P.L. 286, § 2; P.L.2-1987, § 37; P.L.116-1994, § 26.]

Compiler's Notes. Sections 401, 403, 404 and 501 of the Internal Revenue Code, referred to in the last sentence, may be found at 26 U.S.C. §§ 401, 403, 404 and 501.

27-1-12.6-6. Contracts without cash surrender or death benefits — Disclosures. — If an annuity contract does not provide a cash surrender benefit or a death benefit prior to the commencement of any annuity payments at least equal to the minimum nonforfeiture amounts provided in IC 27-1-12.5, the company shall, in addition to the disclosures provided in IC 27-1-12.5-8, make such disclosures as the commissioner by regulation shall provide, including, but not limited to, the following:

(1) The execution by the purchaser of a statement in such form as the commissioner may approve, stating specifically the following, as appropriate:

- (i) The only nonforfeiture value provided by the contract is a paid-up benefit;
- (ii) The contract provides no cash surrender value;
- (iii) The contract provides no benefit should the purchaser die before maturity.

(2) The form shall be made a part of the application or may be executed separately from and attached to the application. It shall be executed at or prior to the time of executing the application and shall be filed with the application in the company's office. [IC 27-1-12.6-6, as added by Acts 1977, P.L. 286, § 2.]

27-1-12.6-7. Rules and regulations. — The commissioner is authorized to promulgate rules and regulations to provide disclosure of (1) the pertinent facts concerning annuity contracts to purchasers of these contracts in advertising and sales literature, (2) practices connected with their issuance,

and (3) their annual nonforfeiture and related values. [IC 27-1-12.6-7, as added by Acts 1977, P.L. 286, § 2.]

27-1-12.6-8. Filing of contract forms — Notice of noncompliance.

— An annuity contract shall not be issued or delivered in this state until the form has been filed with the department, and not thereafter if the department within thirty (30) days after this filing gives a written notice to the company setting out the reasons why the form of the contract does not comply with the laws of this state. [IC 27-1-12.6-8, as added by Acts 1977, P.L. 286, § 2.]

27-1-12.6-9. Deceptive or misleading contracts without cash surrender value. — The commissioner may disapprove any individual annuity contract or contracts issued for delivery in Indiana which do not provide a cash surrender value in accordance with IC 27-1-12.5 upon cessation of the payment of considerations under the contract, if in his opinion the annuity would otherwise be misleading, deceptive or unfair to the purchaser. This provision does not, however, apply (i) to such contract delivered in connection with a pension, profit-sharing or employee benefit plan funded in whole or in part by employer contributions, (ii) to annuities purchased in connection with the termination or winding up of a pension, profit-sharing, or employee benefit plan, or (iii) to an individual annuity contract issued by a company organized and operated without profit to any private shareholder or individual, exclusively for the purpose of aiding nonproprietary education and scientific institutions, and providing a nationwide pension system featuring full funding and full and immediate vesting of benefits. [IC 27-1-12.6-9, as added by Acts 1977, P.L. 286, § 2.]

CHAPTER 13

INSURANCE LAW — CASUALTY, FIRE AND MARINE INSURANCE COMPANIES

SECTION.

- 27-1-13-1. Scope of powers.
- 27-1-13-2. [Repealed.]
- 27-1-13-3. Investment of capital and funds above capital.
- 27-1-13-3.5. Intangible assets attributed to investment in subsidiary.
- 27-1-13-4. Amortization.
- 27-1-13-5. Federal housing loans and investments.
- 27-1-13-6. Limitation of risks.
- 27-1-13-7. Liability insurance policies — Prohibition — Exclusion from coverage as between spouses.
- 27-1-13-8. Liabilities and reserves.
- 27-1-13-8.5. Minimum standards for the establishment of reserves.
- 27-1-13-9. Trading in goods prohibited.

SECTION.

- 27-1-13-10. Conditions to qualification as Indiana rating bureau — Representation of domestic insurers — Approval of insurance commissioner.
- 27-1-13-11. Meetings of governing body — Complaints of aggrieved persons — Hearing — Rectification.
- 27-1-13-12. Representation of Indiana insurers — Division and numbers.
- 27-1-13-13. [Repealed.]
- 27-1-13-14. Definitions.
- 27-1-13-15. Blanket policy for planned unit developments.

27-1-13-1. Scope of powers. — In addition to the general rights, privileges, and powers conferred by IC 27-1-5 through IC 27-1-13 and IC

27-11 and subject to the limitations and restrictions contained in this article and in the articles of incorporation, every casualty, fire, or marine insurance company shall possess and may exercise the rights, privileges, and powers enumerated in this chapter, except that such powers shall not be intended or interpreted to mean that a company organized under either class as set out and defined in IC 27-1-5-1 shall make any kind or kinds of insurance as set out and defined in any other class of IC 27-1-5-1 other than as expressly provided in such classification. [Acts 1935, ch. 162, § 170, p. 588; P.L.252-1985, § 67; P.L.3-1990, § 97.]

Cross References. Casualty insurance company defined, IC 27-1-2-3.

Farmers' mutuals, IC 27-2-1-1, IC 27-5-1-1 — IC 27-5-3-5, IC 27-5-5-1 — IC 27-5-7-1, IC 27-5-10-1 — IC 27-6-2-1, IC 27-6-2-2.

Fire and marine insurance company defined, IC 27-1-2-3.

Lloyds fire insurance, IC 27-7-1-7.

Warehousemen, insurance on agricultural commodities, IC 26-3-7-12 — IC 26-3-7-14.

Cited: *Travelers Indem. Co. v. Armstrong*, 442 N.E.2d 349 (Ind. 1982).

Collateral References. 43 Am. Jur. 2d Insurance §§ 475, 681.

Change in purpose for which premises are occupied or used as increase of hazard voiding insurance coverage. 19 A.L.R.3d 1336.

Coverage of claim for wrongful death of insured. 26 A.L.R.3d 935.

Coverage of policy insuring motor carrier against liability for loss of or damage to shipped property. 36 A.L.R.2d 506.

False swearing, or other misconduct of insured as affecting right of innocent mortgagee or loss payee to recover on property insurance. 24 A.L.R.3d 435.

False swearing, or other misconduct of insured as barring recovery on property insurance by innocent coinsured. 24 A.L.R.3d 450.

Fire insurance on corporate property as affected by its intentional destruction by a corporate officer, employee, or stockholder. 37 A.L.R.3d 1385.

Insured's failure to inform insurer of impending condemnation proceedings as concealment or fraud within provision of fire policy. 9 A.L.R.3d 1411.

Insured's ignorance of loss or casualty, cause of damage, coverage or existence of policy, or identity of insurer, as affecting or excusing compliance with requirements as to time for giving notice, making proof of loss, or bringing action against insurer. 24 A.L.R.3d 1007.

Necessity and sufficiency of insurer's demand, under fire insurance policy, for examination of insured or his books or papers, or for proofs of loss, certificates, or sworn statements. 4 A.L.R.3d 631.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and

arbitrators appointed to determine amount of loss. 25 A.L.R.3d 680.

Notice or proof of loss under one policy as notice or proof of loss under another provision of same policy or another policy issued by same insurer. 29 A.L.R.3d 856.

Overvaluation in proof of loss of property insured as fraud avoiding fire insurance policy. 16 A.L.R.3d 774.

Property insurance, or public liability insurance, as covering, in absence of express provision, after acquired premises or realty, or subsequent additions to described realty. 18 A.L.R.3d 795.

Recoverability under property insurance or insurance against liability for property damage of insured's expenses to prevent or mitigate damages. 33 A.L.R.3d 1262.

Reformation of insurance policy to correctly identify risks and causes of loss. 32 A.L.R.3d 661.

Remedies and measure of damages for wrongful cancellation of liability and property insurance. 34 A.L.R.3d 385.

Right of attorney for holder of property insurance to fee out of insurer's share of recovery from tortfeasor. 2 A.L.R.3d 1441.

Rights in proceeds of insurance on property held jointly with right of survivorship, where one of joint owners dies pending payment of proceeds. 4 A.L.R.3d 427.

Temporary fire, wind, or hail insurance pending issuance of policy. 14 A.L.R.3d 568.

Theft insurance: meaning of term "in transit" as used in insurance policy. 80 A.L.R.2d 445.

Time within which demand for appraisal of property loss must be made, under insurance policy providing for such appraisal. 14 A.L.R.3d 674.

Validity and construction of "other insurance" provisions. 28 A.L.R.3d 551.

Validity, construction and effect of provision in shipping contract or bill of lading that carrier shall have benefit of shipper's insurance against loss of or damage to shipment. 27 A.L.R.3d 984.

What are "appurtenant" private structures within provision of property insurance policy expressly extending coverage to such structures. 43 A.L.R.3d 1351.

What are "fixtures" within provision of property insurance policy expressly extending coverage to fixtures. 17 A.L.R.3d 1381.

What constitutes "vacancy" or "unoccupancy" within fire insurance policy on building other than dwelling. 36 A.L.R.3d 505.

What constitutes "vandalism" or "malicious mischief" within coverage of property insurance policy. 23 A.L.R.3d 1259.

Fire insurance: insurable interest of one expecting to inherit property or take by will. 52 A.L.R.4th 1273.

Construction and effect of "rain insurance" policies insuring against rainfall on the date

of concert, exhibition, game, or the like. 70 A.L.R.4th 1010.

What is "flood" within exclusionary clause of property damage policy. 78 A.L.R.4th 817.

Construction and effect of provisional or monthly reporting inventory insurance. 81 A.L.R.4th 9.

Construction and effect of property insurance provision permitting recovery of replacement costs of property. 1 A.L.R.5th 817.

Fire Insurance: Failure to disclose prior fires affecting insured's property as ground for avoidance of policy. 4 A.L.R.5th 117.

27-1-13-2. [Repealed.]

Compiler's Notes. This section, concerning subsidiary companies, was repealed by Acts 1981, P.L. 241, § 4. For present provisions concerning applicability of filing re-

quirements to subsidiaries established by organization or acquisition prior to September 1, 1981, see IC 27-2-9-1(b).

27-1-13-3. Investment of capital and funds above capital. —

(a) The following definitions apply throughout this section:

(1) "Acceptable collateral" means the following:

(A) As to securities lending transactions and for the purpose of calculating counterparty exposure:

(i) cash;

(ii) cash equivalents;

(iii) letters of credit; and

(iv) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(B) As to lending foreign securities, sovereign debt rated 1 by the Securities Valuation Office.

(C) As to repurchase transactions:

(i) cash;

(ii) cash equivalents; and

(iii) direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(D) As to reverse repurchase transactions:

(i) cash; and

(ii) cash equivalents.

(2) "Admitted assets" means assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(3) "Business entity" means any of the following:

(A) A sole proprietorship.

- (B) A corporation.
 - (C) A limited liability company.
 - (D) An association.
 - (E) A general partnership.
 - (F) A limited partnership.
 - (G) A limited liability partnership.
 - (H) A joint stock company.
 - (I) A joint venture.
 - (J) A trust.
 - (K) A joint tenancy.
 - (L) Any other similar form of business organization, whether for profit or nonprofit.
- (4) "Cash" means any of the following:
- (A) United States denominated paper currency and coins.
 - (B) Negotiable money orders and checks.
 - (C) Funds held in any time or demand deposit in any depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
- (5) "Cash equivalent" means any of the following:
- (A) A certificate of deposit issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (B) A banker's acceptance issued by a depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (C) A government money market mutual fund.
 - (D) A class one (1) money market mutual fund.
- (6) "Class one (1) money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one (1) reserve factor pursuant to the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners or any successor publication.
- (7) "Government money market mutual fund" means a money market mutual fund that at all times:
- (A) invests only in obligations issued, guaranteed, or insured by the United States or collateralized repurchase agreements composed of these obligations; and
 - (B) qualifies for investment without a reserve pursuant to the Purposes and Procedures of the Securities Valuation Office of the National Association of Insurance Commissioners or any successor publication.
- (8) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).
- (9) "Mutual fund" means:
- (A) an investment company; or
 - (B) in the case of an investment company that is organized as a series company, an investment company series;

that is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(10) "Obligation" means any of the following:

- (A) A bond.
- (B) A note.
- (C) A debenture.
- (D) Any other form of evidence of debt.

(11) "Qualified business entity" means a business entity that is:

- (A) an issuer of obligations or preferred stock that is rated one (1) or two (2) or is rated the equivalent of one (1) or two (2) by the Securities Valuation Office or by a nationally recognized statistical rating organization recognized by the Securities Valuation Office; or
- (B) a primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.

(12) "Securities Valuation Office" refers to the Securities Valuation Office of the National Association of Insurance Commissioners or any successor of the Office established by the National Association of Insurance Commissioners.

(b) Any company, other than one organized as a life insurance company, organized under the provisions of IC 27-1 or any other law of this state and authorized to make any or all kinds of insurance described in class 2 or class 3 of IC 27-1-5-1 shall invest its capital or guaranty fund as follows and not otherwise:

(1) In cash.

(2) In:

- (A) direct obligations of the United States; or
- (B) obligations secured or guaranteed as to principal and interest by the United States.

(3) In:

- (A) direct obligations; or
- (B) obligations secured by the full faith and credit;

of any state of the United States or the District of Columbia.

(4) In obligations of any county, township, city, town, village, school district, or other municipal district within the United States which are a direct obligation of the county, township, city, town, village, or district issuing the same.

(5) In obligations secured by mortgages or deeds of trust or unencumbered real estate or perpetual leases thereon in the United States not exceeding eighty percent (80%) of the fair value of the security determined in a manner satisfactory to the department, except that the percentage stated may be exceeded if and to the extent such excess is guaranteed or insured by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any such governmental units. Where improvements on the land constitute a part of the value on which the loan is made, the improvements shall be insured against fire and tornado for the benefit

of the mortgagee. For the purposes of this section, real estate may not be deemed to be encumbered by reason of the existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights-of-way, joint driveways, sewer rights, rights-in-walls, nor by reason of building restrictions, or other restrictive covenants, nor when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner. The restrictions contained in this subdivision do not apply to loans or investments made under section 5 [IC 27-1-13-5] of this chapter.

(c) Any company organized under the provisions of this article or any other law of this state and authorized to make any or all of the kinds of insurance described in class 2 or class 3 of IC 27-1-5-1 shall invest its funds over and above its required capital stock or required guaranty fund as follows, and not otherwise:

(1) In cash or cash equivalents. However, not more than ten percent (10%) of admitted assets may be invested in any single government money market mutual fund or class one (1) money market mutual fund.

(2) In direct obligations of the United States or obligations secured or guaranteed as to principal and interest by the United States.

(3) In obligations issued, guaranteed, or insured as to principal and interest by a city, county, drainage district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a state, territory, or possession of the United States, the District of Columbia, Canada, or any province of Canada, providing such obligations are authorized by law and are either:

(A) direct and general obligations of the issuing, guaranteeing, or insuring governmental unit, administration, agency, authority, district, subdivision, or instrumentality;

(B) payable from designated revenues pledged to the payment of the principal and interest of the obligations; or

(C) improvement bonds or other obligations constituting a first lien, except for tax liens, against all of the real estate within the improvement district or on that part of such real estate not discharged from such lien through payment of the assessment.

The area to which the improvement bonds or other obligations under clause (C) relate must be situated within the limits of a town or city and at least fifty percent (50%) of the properties within that area must be improved with business buildings or residences.

(4) In:

(A) direct obligations; or

(B) obligations secured by the full faith and credit;

of any state of the United States, the District of Columbia, or Canada or any province thereof.

(5) In obligations guaranteed, supported, or insured as to principal and interest by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality

of any of the political units listed in this subdivision. An obligation is "supported" for the purposes of this subdivision when repayment of the obligation is secured by real or personal property of value at least equal to the principal amount of the indebtedness by means of mortgage, assignment of vendor's interest in one (1) or more conditional sales contracts, other title retention device, or by means of other security interest in the property for the benefit of the holder of the obligation, and one (1) of the political units listed in this subdivision, or an administration, agency, authority, or instrumentality listed in this subdivision, has entered into a firm agreement to rent or use the property pursuant to which entity is obligated to pay money as rental or for the use of the property in amounts and at times that are sufficient, after provision for taxes upon and for other expenses of the use of the property, to repay in full the indebtedness, both principal and interest, and when the firm agreement and the money obligated to be paid under the agreement are assigned, pledged, or secured for the benefit of the holder of the obligation. However, where the security consists of a first mortgage lien or deed of trust on a fee interest in real property, the obligation may provide for the amortization, during the initial fixed period of the lease or contract of less than one hundred percent (100%) of the indebtedness if there is pledged or assigned, as additional security for the obligation, sufficient rentals payable under the lease, or of contract payments, to secure the amortized obligation payments required during the initial, fixed period of the lease or contract, including but not limited to payments of principal, interest, and taxes other than the income taxes of the borrower, and if there is to be left unamortized at the end of the period an amount not greater than the original appraised value of the land only, exclusive of all improvements, as prescribed by law.

(6) In obligations secured by mortgages or deeds of trust or unencumbered real estate or perpetual leases thereon, in any state in the United States, the District of Columbia, Canada, or any province of Canada, not exceeding eighty percent (80%) of the fair value of the security determined in a manner satisfactory to the department, except that the percentage stated may be exceeded if and to the extent that the excess is guaranteed or insured by the United States, any state, territory, or possession of the United States, the District of Columbia, Canada, any province of Canada, or by an administration, agency, authority, or instrumentality of any of such governmental units. The value of the real estate must be determined by a method and in a manner satisfactory to the department. The restrictions contained in this subdivision do not apply to loans or investments made under section 5 of this chapter.

(7) In obligations issued under or pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 through 2279aa-14) as in effect on December 31, 1990, or the Federal Home Loan Bank Act (12 U.S.C. 1421 through 1449) as in effect on December 31, 1990, interest bearing obligations of the FSLIC Resolution Fund and shares of any institution that is insured by the Savings Association Insurance Fund of the Federal

Deposit Insurance Corporation to the extent that the shares are insured, obligations issued or guaranteed by the International Bank for Reconstruction and Development, obligations issued or guaranteed by the Inter-American Development Bank, and obligations issued or guaranteed by the African Development Bank.

(8) In any mutual fund that:

(A) has been registered with the Securities and Exchange Commission for a period of at least five (5) years immediately preceding the date of purchase;

(B) has net assets of at least twenty-five million dollars (\$25,000,000) on the date of purchase; and

(C) invests substantially all of its assets in investments permitted under this subsection.

The amount invested in any single mutual fund shall not exceed ten percent (10%) of admitted assets. The aggregate amount of investments under this subdivision may be limited by the commissioner if the commissioner finds that investments under this subdivision may render the operation of the company hazardous to the company's policyholders, to the company's creditors, or to the general public. This subdivision in no way limits or restricts investments that are otherwise specifically permitted under this section.

(9) In obligations payable in United States dollars and issued, guaranteed, assumed, insured, or accepted by a foreign government or by a solvent business entity existing under the laws of a foreign government, if the obligations of the foreign government or business entity meet at least one (1) of the following criteria:

(A) The obligations carry a rating of at least A3 conferred by Moody's Investor Services, Inc.

(B) The obligations carry a rating of at least A- conferred by Standard & Poor's Corporation.

(C) The earnings available for fixed charges of the business entity for a period of five (5) fiscal years preceding the date of purchase have averaged at least three (3) times the average fixed charges of the business entity applicable to the period, and if during either of the last two (2) years of the period, the earnings available for fixed charges were at least three (3) times the fixed charges of the business entity for the year. As used in this subdivision, the terms "earnings available for fixed charges" and "fixed charges" have the meanings set forth in IC 27-1-12-2(a).

Foreign investments authorized by this subdivision shall not exceed twenty percent (20%) of the company's admitted assets. This subdivision in no way limits or restricts investments that are otherwise specifically permitted under this section. Canada is not a foreign government for purposes of this subdivision.

(10) In the obligations of any solvent business entity existing under the laws of the United States, any state of the United States, the District of Columbia, Canada, or any province of Canada, provided that interest on the obligations is not in default.

(11) In the preferred or guaranteed shares of any solvent business entity, so long as the business entity is not and has not been for the preceding five (5) years in default in the payment of interest due and payable on its outstanding debt or in arrears in the payment of dividends on any issue of its outstanding preferred or guaranteed stock.

(12) In the shares, other than those specified in subdivision (7), of any solvent business entity existing under the laws of any state of the United States, the District of Columbia, Canada, or any province of Canada, and in the shares of any institution wherever located which has the insurance protection provided by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation. Except for the purpose of mutualization or for the purpose of retirement of outstanding shares of capital stock pursuant to amendment of its articles of incorporation, or in connection with a plan approved by the commissioner for purchase of such shares by the insurance company's officers, employees, or agents, or for the elimination of fractional shares, no company subject to the provisions of this section may invest in its own stock.

(13) In loans upon the pledge of any mortgage, stocks, bonds, or other evidences of indebtedness, acceptable as investments under the terms of this chapter, if the current value of the mortgage, stock, bond, or other evidences of indebtedness is at least twenty-five percent (25%) more than the amount loaned on it.

(14) In real estate, subject to subsections (d) and (e).

(15) In securities lending, repurchase, and reverse repurchase transactions with business entities, subject to the following requirements:

(A) The company's board of directors shall adopt a written plan that specifies guidelines and objectives to be followed, such as:

(i) a description of how cash received will be invested or used for general corporate purposes of the company;

(ii) operational procedures to manage interest rate risk, counterparty default risk, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(iii) the extent to which the company may engage in these transactions.

(B) The company shall enter into a written agreement for all transactions authorized in this subdivision. The written agreement shall require the termination of each transaction not more than one (1) year from its inception or upon the earlier demand of the company. The agreement shall be with the counterparty business entity but, for securities lending transactions, the agreement may be with an agent acting on behalf of the company if the agent is a qualified business entity and if the agreement:

(i) requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(ii) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(C) Cash received in a transaction under this section shall be invested in accordance with this section and in a manner that recognizes the liquidity needs of the transaction or used by the company for its general corporate purposes. For as long as the transaction remains outstanding, the company or its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the commissioner:

- (i) possession of the acceptable collateral;
- (ii) a perfected security interest in the acceptable collateral; or
- (iii) in the case of a jurisdiction outside the United States, title to, or rights of a secured creditor to, the acceptable collateral.

(D) For purposes of calculations made to determine compliance with this subdivision, no effect may be given to the company's future obligation to resell securities in the case of a repurchase transaction, or to repurchase securities in the case of a reverse repurchase transaction. A company shall not enter into a transaction under this subdivision if, as a result of and after giving effect to the transaction:

- (i) the aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity pursuant to this subdivision would exceed five percent (5%) of its admitted assets (but, in calculating the amount sold to or purchased from a business entity pursuant to repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement); or
- (ii) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this subdivision would exceed forty percent (40%) of its admitted assets.

(E) In a securities lending transaction, the company shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the company in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.

(F) In a reverse repurchase transaction, the company shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the company in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity shall be obligated to

deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least ninety-five percent (95%) of the market value of the transferred securities.

(G) In a repurchase transaction, the company shall receive as acceptable collateral transferred securities having a market value equal to at least one hundred two percent (102%) of the purchase price paid by the company for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the company, the business entity shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least one hundred two percent (102%) of the purchase price. Securities acquired by a company in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(16) In mortgage backed securities, including collateralized mortgage obligations, mortgage pass through securities, mortgage backed bonds, and real estate mortgage investment conduits, adequately secured by a pool of mortgages, which mortgages are fully guaranteed or insured by the government of the United States or any agency of the United States, including the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(17) In mortgage backed securities, including collateralized mortgage obligations, mortgage pass through securities, mortgage backed bonds, and real estate mortgage investment conduits, adequately secured by a pool of mortgages, if the securities carry a rating of at least:

(A) A3 conferred by Moody's Investor Services, Inc.; or

(B) A- conferred by Standard & Poor's Corporation.

The amount invested in any one (1) obligation or pool of obligations described in this subdivision shall not exceed five percent (5%) of admitted assets. The aggregate amount of all investments under this subdivision shall not exceed ten percent (10%) of admitted assets.

(18) Any other investment acquired in good faith as payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the interests of the company in that investment.

(19) In any other investment. The total of all investments under this subdivision, except for investments in subsidiary companies under IC 27-2-9, may not exceed an aggregate amount of ten percent (10%) of the insurer's admitted assets. Investments are not permitted under this subdivision:

(A) if expressly prohibited by statute; or

(B) in an insolvent organization or an organization in default with respect to the payment of principal or interest on its obligations.

(d) Any company subject to the provisions of this section shall have power to acquire, hold, or convey real estate, or an interest therein, as described below, and no other:

- (1) Leaseholds, provided the mortgage term shall not exceed four-fifths ($\frac{4}{5}$) of the unexpired lease term, including enforceable renewable options, remaining at the time of the loan, such real estate or leaseholds to be located in the United States, any territory or possession of the United States, or Canada, the value of such leasehold for statement purposes shall be determined in a manner and form satisfactory to the department. At the time the leasehold is acquired and approved by the department, a schedule of annual depreciation shall be set up by the department in which the value of said leasehold is to be depreciated, and said depreciation is to be averaged out over not exceeding a period of fifty (50) years.
- (2) The building in which it has its principal office and the land on which it stands.
- (3) Such as shall be necessary for the convenient transaction of its business.
- (4) Such as shall have been acquired for the accommodation of its business.
- (5) Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.
- (6) Such as shall have been conveyed to it in connection with its investments in real estate contracts or its investments in real estate under lease or for the purpose of leasing or such as shall have been acquired for the purpose of investment under any law, order, or regulation authorizing such investment, for statement purposes, the value of such real estate shall be determined in a manner satisfactory to the department.
- (7) Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or in exchange for real estate so conveyed to it.
- (8) Such as it shall have purchased at sales on judgments, decrees, or mortgages obtained or made for such debts.
- (e) All real estate described in subsection (d)(4) through (d)(8) which is not necessary for the convenient transaction of its business shall be sold by said company and disposed of within ten (10) years after it acquired title to the same, or within five (5) years after the same has ceased to be necessary for the accommodation of its business, unless the company procures the certificate of the commissioner that its interests will suffer materially by a forced sale of the real estate, in which event the time for the sale may be extended to such time as the commissioner directs in the certificate. [Acts 1935, ch. 162, § 172, p. 588; 1937, ch. 288, § 3, p. 1317; 1939, ch. 63, § 4, p. 419; 1949, ch. 206, § 1; 1971, P.L. 384, § 1; 1973, P.L. 277, § 1; 1981, P.L. 241, § 1; P.L.159-1986, § 3; P.L.161-1986, § 1; P.L.121-1990, § 2; P.L.8-1991, § 9; P.L.184-1996, § 2; P.L.186-1997, § 7.]

Cross References. Application to farmers' mutual insurance companies, IC 27-5-3.

Investment in bonds of federal land banks or joint stock land banks, IC 27-2-6-1.

Investment of funds in toll road revenue bonds of state, IC 8-15-1.

Indiana Law Journal. "Consumer Warranty or Insurance Contract? A View Towards a Rational State Regulatory Policy," 51 Ind. L.J. 1103.

NOTES TO DECISIONS

Loan in Settlement of Claim.

The provision that an insurance company other than a life insurance company shall make certain investments only applies only to the capital of the company, and not to the

working funds, and does not prevent the making of a loan in the settlement of an automobile claim. *Klukas v. Yount*, 121 Ind. App. 160, 98 N.E.2d 227 (1951).

27-1-13-3.5. Intangible assets attributed to investment in subsidiary. — Goodwill, trade names, and other like intangible assets attributable to any investment in a subsidiary shall be admitted as assets except:

- (1) To the extent that the aggregate amount thereof exceeds ten percent (10%) of the capital and surplus of the insurer as reported in its latest annual report filed with the commissioner;
- (2) To the extent that any such asset is not being amortized ratably over a period of ten (10) years or less from the date of acquisition; and
- (3) In determining the financial condition or solvency of an insurer under IC 27-9. [P.L.160-1986, § 2.]

27-1-13-4. Amortization. — (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or, instead of this method, according to an accepted method of valuation as is approved by the department. The purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of the securities. The department shall have full discretion in determining the method of calculating values according to the rules set forth in this subsection. However, no such method or valuation under this subsection may be inconsistent with any applicable method or valuation used by insurers in general or any such method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

(b) Securities held by an insurer, other than those referred to in subsection (a), shall be valued, in the discretion of the department, at their market value or at their appraised value or at prices determined by the department as representing the fair market value of the securities. Preferred or guaranteed stocks or shares, while paying full dividends, may be carried at a fixed value in lieu of market value at the discretion of the department and in accordance with the method of valuation that the department approves. No valuation under this subsection may be inconsistent with any applicable valuation or method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization. [Acts 1935, ch. 162, § 172a, p. 588; P.L.116-1994, § 27; P.L.130-1994, § 20.]

Cross References. Application to farmers' mutual insurance companies, IC 27-5-3.

27-1-13-5. Federal housing loans and investments. — (a) Subject to such rules as the department finds to be necessary and proper, any insurance company other than one organized as a life insurance company organized under the provisions of this article or any other law of this state and authorized to make any or all of the kinds of insurance described in Class 2 or Class 3 of IC 27-1-5-1 shall have the following powers:

(1) To make such loans and advances of credit and purchase of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

(2) To make such loans secured by mortgages on real property or leasehold, as the federal housing administrator insures or makes a commitment to insure, and to obtain such insurance.

(3) To purchase, invest its capital and other funds in, and dispose of, notes or bonds secured by deed of trusts or mortgage insured by the federal housing administrator or debentures issued by the federal housing administrator, or bonds or other securities issued by national mortgage associations.

(b) No law of this state prescribing the nature, amount, or form of security or requiring security upon which loans or advances of credits may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made shall be deemed to apply to loans, advances of credit, or purchases made pursuant to subsections (a)(1) and (a)(2).

(c) Any rule made and promulgated under and pursuant to this section may apply to one (1) or more of the insurance companies to which this section is applicable. [Acts 1935, ch. 162, § 173, p. 588; 1937, ch. 288, § 4, p. 1317; P.L.252-1985, § 68.]

27-1-13-6. Limitation of risks. — (a) No company organized to make any kind or kinds of insurance included in class II and class III of IC 27-1-5-1 may take, on any one (1) risk of whatever nature, a sum exceeding one-tenth ($\frac{1}{10}$) part of its paid-up capital, surplus, and contingent reserves, if any, if a stock company, or one-tenth ($\frac{1}{10}$) part of its surplus and contingent reserves, if any, if other than a stock company. No portion of any such risk or hazard which shall have been reinsured in accordance with any regulations that the commissioner may enact pursuant to this section shall be included in determining the limitation of risk prescribed in this section. This section shall not apply to marine insurances, companies organized to make life insurance, or companies organized to issue title insurance.

(b) No stock or mutual insurance company transacting fidelity or surety business in this state shall expose itself to any loss on any one (1) fidelity or surety risk or hazard in an amount exceeding ten percent (10%) of its capital, surplus and contingent reserves, if any, unless it shall be protected in excess of that amount by: (a) Reinsurance in a company authorized to transact the fidelity or surety business in this state, provided that such reinsurance is in such form as to enable the obligee or beneficiary to maintain an action thereon against the company reinsured jointly with such

reinsurer and, upon recovering judgment against such reinsured, to have recovery against such reinsurer for payment to the extent in which it may be liable under such reinsurance and in discharge thereof; or (b) the cosuretyship of such a company similarly authorized; or (c) deposit with it in pledge or conveyance to it in trust for its protection of property; or (d) conveyance or mortgage for its protection; or (e) in case a suretyship obligation was made on behalf or on account of a fiduciary holding property in a trust capacity, deposit or other disposition of a portion of the property so held in trust that no future sale, mortgage, pledge or other disposition can be made thereof without the consent of such company; except by decree or order of a court of competent jurisdiction. However (1) such a company may execute what are known as transportation or warehousing bonds for United States internal revenue taxes to an amount equal to fifty percent (50%) of its capital, surplus and contingent reserves, if any; (2) when the penalty of the suretyship obligation exceeds the amount of a judgment described therein as appealed from and thereby secured, or exceeds the amount of the subject-matter in controversy or of the estate in the hands of the fiduciary for the performance of whose duties it is conditioned, the bond may be executed if the actual amount of the judgment or the subject-matter in controversy or estate not subject to supervision or control of the surety is not in excess of such limitation; and (3) when the penalty of the suretyship obligation executed for the performance of a contract exceeds the contract price, the latter shall be taken as the basis for estimating the limit of risk within the meaning of this section. No such company may, anything to the contrary in this section notwithstanding, execute suretyship obligations guaranteeing the deposits of any single financial institution in an aggregate amount in excess of ten percent (10%) of the capital, surplus and contingent reserves, if any, of such corporate surety, unless it is protected in excess of that amount by credits in accordance with subdivisions (a), (b), (c) or (d) of this subsection. [Acts 1935, ch. 162, § 175, p. 588; 1982, P.L. 162, § 1; P.L.260-1983, § 4.]

Cross References. Application to farmers' mutual insurance companies, IC 27-5-3.

Indiana Law Review. A Study of Medical

Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

NOTES TO DECISIONS

Actions by Beneficiaries of Surety Bonds.

Upon default of the obligee, the beneficiaries of surety bonds could not maintain direct suit on the bonds against the surety company's reinsurer once the company had become insolvent and liquidation proceedings against it had begun, despite this section, which gives the insured a direct joint action against the insurer and his reinsurer, as former IC 27-1-

4-10 provided that if an insurer was in liquidation no suit could be maintained outside the liquidation proceeding, and hence suit against the reinsurer once liquidation proceedings against the insurer had begun, was barred. *Cummings Whsle. Elec. Co. v. Home Owners Ins. Co.*, 492 F.2d 268 (7th Cir.), cert. denied, 419 U.S. 883, 95 S. Ct. 149, 42 L. Ed. 2d 123 (1974).

27-1-13-7. Liability insurance policies — Prohibition — Exclusion from coverage as between spouses. — (a) No policy of insurance against loss or damage resulting from accident to, or death or injury suffered by, an

employee or other person or persons and for which the person or persons insured are liable, or, against loss or damage to property resulting from collision with any moving or stationary object and for which loss or damage the person or persons insured is liable, shall be issued or delivered in this state by any domestic or foreign corporation, insurance underwriters, association, or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision that the insolvency or bankruptcy of the person or persons insured shall not release the insurance carrier from the payment of damages for injury sustained or loss occasioned during the life of such policy, and stating that in case execution against the insured is returned unsatisfied in an action brought by the injured person or his or her personal representative in case death resulted from the accident because of such insolvency or bankruptcy then an action may be maintained by the injured person, or his or her personal representative, against such domestic or foreign corporation, insurance underwriters, association or other insurer under the terms of the policy for the amount of the judgment in the said action not exceeding the amount of the policy. No such policy shall be issued or delivered in this state by any foreign or domestic corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision that notice given by or on behalf of the insured to any authorized agent of the insurer within this state, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. No such policy shall be issued or delivered in this state to the owner of a motor vehicle, by any domestic or foreign corporation, insurance underwriters, association or other insurer authorized to do business in this state, unless there shall be contained within such policy a provision insuring such owner against liability for damages for death or injury to person or property resulting from negligence in the operation of such motor vehicle, in the business of such owner or otherwise, by any person legally using or operating the same with the permission, expressed or implied, of such owner. If a motor vehicle is owned jointly by a husband and wife, either spouse may, with the written consent of the other spouse, be excluded from coverage under the policy. A husband and wife may choose instead to have their liability covered under separate policies. A policy issued in violation of this section shall, nevertheless, be held valid but be deemed to include the provisions required by this section, and when any provision in such policy or rider is in conflict with the provision required to be contained by this section, the rights, duties and obligations of the insurer, the policyholder and the injured person or persons shall be governed by the provisions of this section.

(b) No policy of insurance shall be issued or delivered in this state by any foreign or domestic corporation, insurance underwriters, association, or other insurer authorized to do business in this state, unless it contains a provision that authorizes such foreign or domestic corporation, insurance underwriters, association, or other insurer authorized to do business in this state to settle the liability of its insured under IC 34-18 without the consent of its insured when the unanimous opinion of the medical review panel under IC 34-18-10-22(b)(1) is that the evidence supports the conclusion that

the defendant failed to comply with the appropriate standard of care as charged in the complaint. [Acts 1935, ch. 162, § 177, p. 588; 1981, P.L. 241, § 2; P.L.111-1998, § 1.]

Compiler's Notes. P.L.111-1998, § 17, effective July 1, 1998, provides:

"(a) IC 27-1-13-7, as amended by this act, applies to all medical malpractice liability insurance policies issued, delivered, or renewed after July 1, 1999.

"(b) This SECTION expires January 1, 2000."

Effective Dates. P.L.111-1998, § 19, declared an emergency and § 1 provided that the amendment take effect July 1, 1999.

Cross References. Application to farmers' mutual insurance companies, IC 27-5-3.

Indiana Law Journal. Resolution of Con-

flicting "Other Insurance" Clauses: New Developments in Indiana, 46 Ind. L. J. 270.

Cited: Wittig v. United Servs. Auto. Ass'n, 17 Ind. Dec. 250, 300 F. Supp. 679 (N.D. Ind. 1969); Motorists Mut. Ins. Co. v. Johnson, 139 Ind. App. 622, 8 Ind. Dec. 687, 218 N.E.2d 712 (1966); State Farm Mut. Auto. Ins. Co. v. Estes, 142 Ind. App. 151, 12 Ind. Dec. 618, 233 N.E.2d 253 (1968); Millen v. Dorroh, 161 Ind. App. 430, 43 Ind. Dec. 578, 316 N.E.2d 403 (1974); Vernon Fire & Cas. Ins. Co. v. American Underwriters, Inc., 171 Ind. App. 309, 55 Ind. Dec. 367, 356 N.E.2d 693 (1976).

NOTES TO DECISIONS

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Where an automobile guest was injured in a collision of the insured automobile when the same was being driven by an insolvent person, with the permission of the owner, and the collision resulted from the driver's negligence, the insurer was liable in damages, although the driver was not specifically named as an insured in the policy. *Mercer Cas. Co. v. Kreamer*, 105 Ind. App. 358, 11 N.E.2d 84 (1937).

By providing coverage broader than that required by Indiana law, appellee's insurance contract could not be said to be violative of Indiana public policy. *Riverside Ins. Co. of Am. v. Smith*, 628 F.2d 1002 (7th Cir. 1980).

A "household exclusion" clause in an automobile liability insurance policy, excluding coverage for "bodily injury to any person who is related by blood, marriage, or adoption to an insured against whom claim is made if such person resides in the same household as such insured," is not contrary to the public

policy of Indiana and is enforceable to preclude liability coverage of injuries sustained by the spouse of the insured. *Allstate Ins. Co. v. Boles*, 481 N.E.2d 1096 (Ind. 1985.)

Applicability.

This section does not apply to contents of insurance policies issued or delivered in another state. *Tisdale v. Nationwide Mut. Ins. Co.*, 148 Ind. App. 670, 25 Ind. Dec. 516, 269 N.E.2d 390 (1971).

This section does not contemplate insuring an owner against liability which results when his vehicle is operated by a person who obtains permission from one acting under the owner's apparent authority; the statute only applies to those who obtain express or implied permission to drive the owner's vehicle. *State Farm Mut. Auto. Ins. Co. v. Gonterman*, 637 N.E.2d 811 (Ind. 1994).

Construction.

The legislature did not intend to require that all owners' policies necessarily provide protection to any person operating a vehicle with the owner's consent. Such a requirement would have rendered the provisions for operators' policies in former IC 9-2 superfluous. *Safeco Ins. Co. of Am. v. State Farm Mut. Auto. Ins. Co.*, 555 N.E.2d 523 (Ind. App. 1990).

Coverage of Owner and Operator.

—In General.

The provision of this section that no automobile liability insurance policy shall be issued to the owner unless there shall be contained within such policy a provision insuring such owner against liability for damages for death or injury to person or property resulting

Coverage of Owner and Operator. (Cont'd)

—In General. (Cont'd)

from negligence in the operation of such motor vehicle, in the business of such owner or otherwise, by any person legally using or operating the same with permission, express or implied, of such owner, amounts to nothing more than an extended coverage for the benefit of the insured the same as though written in the policy, and does not prohibit the insurer from excluding liability for injury or damage occurring while the motor vehicle is being operated by a person in violation of the law as to age. *Culley v. Farm Bureau Mut. Ins. Co.*, 224 Ind. 483, 69 N.E.2d 19 (1946).

The statutory liability of an insurer of a motor vehicle for liability for injury or damage for extended coverage of persons lawfully operating the vehicle with the consent of the insured is subject to all other provisions of the policy which define the risks insured or excluded. *Culley v. Farm Bureau Mut. Ins. Co.*, 224 Ind. 483, 69 N.E.2d 19 (1946).

A clause in an automobile liability insurance policy excluding liability for injury or damage occurring while it is being operated by any person in violation of the law as to age, or in any event under the age of 14 years, is not against public policy and is solely a matter of contract. *Culley v. Farm Bureau Mut. Ins. Co.*, 224 Ind. 483, 69 N.E.2d 19 (1946).

In an action against an insurance company to recover the amount of judgments obtained by plaintiff against a third person whose negligent operation of an automobile insured by defendant caused the damages resulting in the judgments, an instruction setting forth the statutes relating to liability insurance contracts, and concluding that such statutes provide that only the implied consent of the owner is necessary to constitute permission by the owner to another to use the automobile, was erroneous, since they apply only to protect the owners from liability caused by the negligence of another using the automobile with permission of the owner, express or implied, and do not serve to protect the permittee whose negligence causes the injuries, but where, under the policy involved, and without regard to the statutes, implied permission was sufficient to bring the permittee within the protection of the contract, and such implied permission was proved, the error was harmless. *American Employers' Ins. Co. v. Cornell*, 225 Ind. 559, 76 N.E.2d 562 (1948).

—Coverage Beyond Statutory Requirements.

Automobile liability insurers need only provide noninsured vehicle coverage for the owner of the insured auto and for persons using the automobile with the owner's per-

mission. All coverage beyond the statutory requirements is a matter of contract between the parties which will not be disturbed unless it clearly violates the uninsured motorist provisions. *Connell v. American Underwriters, Inc.*, 453 N.E.2d 1028 (Ind. App. 1983).

—Effect of 1981 Amendments.

The 1981 amendments to IC 27-1-13-7 did not alter the basic requirement that automobile liability insurers need only provide liability coverage for the owner of the insured automobile and for persons using the vehicle with the permission of the owner. *Indiana Lumbermens Mut. Ins. Co. v. Vincel*, 452 N.E.2d 418 (Ind. App. 1983).

—Exclusion of Non-family Operator.

An endorsement to a policy which excluded bodily injury and property damage coverage for "any person under the age of twenty-five who is not a member of the named insured's family," was not invalid because of this section. *Safeco Ins. Co. of Am. v. State Farm Mut. Auto. Ins. Co.*, 555 N.E.2d 523 (Ind. App. 1990).

Expressed or Implied Permission.

The words "express or implied" used in this section are words of limitation on the extent of coverage Indiana has decided to recognize. *Riverside Ins. Co. of Am. v. Smith*, 628 F.2d 1002 (7th Cir. 1980).

The obvious intent of the Indiana legislature is to require coverage only in situations where the permittee had received the express or implied permission of the owner. *Riverside Ins. Co. of Am. v. Smith*, 628 F.2d 1002 (7th Cir. 1980).

Instructions.

In action against insurance company after execution was returned unsatisfied, where operator of automobile was driving with the permission, express or implied, of the owner and in such operation he was negligent and damages resulted, an instruction under the provisions of the statute as follows, "At the time that the accident in question happened, it was provided by law in this state in substance that no policy of insurance against loss or damage resulting from loss, damage to, or injuries suffered by any person or persons for which the person covered by said insurance policy is liable, shall be issued or delivered by any insurance company in this state unless such policy contains a provision that the insolvency or bankruptcy of the person insured shall not release the insurance carrier from the payment of damages for injuries sustained or loss occasioned during the life of the policy, and that in case an execution against the insured is returned unsatisfied because of the insolvency or bankruptcy of such insured

Instructions. (Cont'd)

in an action brought by the injured person, then an action may be maintained by an injured person against the insurance company under the terms of its policy for the amount of the policy. I therefore instruct you that if you find from the evidence in this case that the H. W. against whom the plaintiff recovered judgment in the Superior Court of A County for \$2,500 was an additional insured within the meaning of the policy herein sued upon, and that execution was issued on said judgment and returned unsatisfied because of the insolvency of said W., then the plaintiff is authorized to bring this action against the defendant and this is true even though said W. is not specifically named as an assured in said policy" was proper. *Mercer Cas. Co. v. Kreamer*, 105 Ind. App. 358, 11 N.E.2d 84 (1937).

Liability of Others.

Indiana law clearly requires that the policy cover the owner against liability when the car is being operated by some other person with his permission, express or implied, but it is silent as to covering anyone else's liability. *Riverside Ins. Co. of Am. v. Smith*, 628 F.2d 1002 (7th Cir. 1980).

Indiana law clearly requires that insurance policies cover the owner against liability when the car is being operated by some other person with his permission, express or implied, but it does not require insurance policies to cover the liability of permissive users. *Standard Mut. Ins. Co. v. Pavelka*, 580 F. Supp. 224 (S.D. Ind. 1983).

Limitation of Liability.**—Permissive Drivers.**

A policy provision that limits an insurer's liability to the statutory minimum for permissive drivers is not against public policy. *Allstate Ins. Co. v. United Farm Bureau Mut. Ins. Co.*, 618 N.E.2d 31 (Ind. App. 1993).

This section only requires coverage for the owner when the owner gives either express or implied permission to use an insured vehicle, but it does not require coverage for permissive users. A policy extending coverage to permissive users provides coverage broader than that required under Indiana law and does not violate Indiana public policy. *Manor v. Statesman Ins. Co.*, 612 N.E.2d 1109 (Ind. App. 1993).

In a coverage dispute, permissive use cannot be implied when an express restriction on the scope of permission prohibits the use at issue. *State Farm Mut. Auto. Ins. Co. v. Gonterman*, 637 N.E.2d 811 (Ind. 1994).

One who has permission of an insured owner to use the automobile continues as such a permittee while the car remains in his

possession, even though that use may later prove to be for a purpose not contemplated by the insured owner when he entrusted the vehicle to the use of such permittee. *Raines v. Auto-Owners Ins. Co.*, 703 N.E.2d 689 (Ind. App. 1998).

Where the son of an insured driver and his friend were injured in a collision while driving a rental vehicle, and where the testimony of the parent was that the son had been permitted to drive her own vehicle on occasion and would probably have been given permission to drive the rental car, a reasonable fact-finder could infer implied permission. *Raines v. Auto-Owners Ins. Co.*, 703 N.E.2d 689 (Ind. App. 1998).

Omnibus Clause.

Omnibus clause in liability insurance policy extends to and is for the benefit of a person driving with the permission of the owner. *Arnold v. State Farm Mut. Auto. Ins. Co.*, 260 F.2d 161 (7th Cir. 1958).

Where insured grants permission to another to operate automobile, such permittee is covered and benefited by the omnibus clause of the liability insurance policy on the insured even though the permittee deviates from the use of the vehicle contemplated by the owner at the time the permission was granted. *Arnold v. State Farm Mut. Auto. Ins. Co.*, 260 F.2d 161 (7th Cir. 1958).

Coverage under the omnibus clause of a liability policy is not vitiated by the fact that permission to operate the automobile was secured by misrepresentations of the permittee to the insured if (1) the misrepresentations were immaterial to the actual possession of the vehicle or (2) the insured failed to make reasonable inquiry into those misrepresentations which were material. *Auto Owners (Mut.) Ins. Co. v. Stanley*, 10 Ind. Dec. 198, 262 F. Supp. 1 (N.D. Ind. 1967).

Indiana follows the "liberal rule" when interpreting the scope of coverage under an insurance policy omnibus clause. *State Farm Mut. Auto. Ins. Co. v. Gonterman*, 637 N.E.2d 811 (Ind. 1994).

The permissive user's deviation from the use intended by the owner does not operate to terminate the initial permission granted by the owner in order to deny coverage under the omnibus clause. *State Farm Mut. Auto. Ins. Co. v. Gonterman*, 637 N.E.2d 811 (Ind. 1994).

Restrictions Placed by Owner.

When the owner places restrictions on use of the vehicle, violations of such use restrictions may terminate the initial permission. *State Farm Mut. Auto. Ins. Co. v. Gonterman*, 637 N.E.2d 811 (Ind. 1994).

Right to Sue Insurer.

This statute was enacted for the protection

Right to Sue Insurer. (Cont'd)

of the injured third party and the insured, not for the protection of the insurer, and, while it requires that an insurance policy issued and delivered in Indiana provide for the right of an injured third party to bring an action against insurer of a bankrupt or insolvent tortfeasor where an execution has been returned unsatisfied, it does not require that an execution must be returned unsatisfied before suit can be brought against tortfeasor's insurer. *Barker v. Sumney*, 185 F. Supp. 298 (N.D. Ind. 1960).

Collateral References. Assignability of insured's right to recover over against liability insurer for rejection of settlement offer. 12 A.L.R.3d 1158.

Automobile liability insurance policy as covering, in the absence of specific exclusion, personal injury or death of, or loss sustained by, named or additional insured. 15 A.L.R.3d 711.

Automobile liability insurance: sole, unconditional, or absolute ownership clause. 71 A.L.R.2d 267.

Automobile operator's liability policy issued in compliance with financial responsibility statute. 88 A.L.R.2d 995.

Carrying of insurance by persons engaged in the business of renting motor vehicles without drivers (drive-it-yourself systems). 7 A.L.R.2d 456.

Construction and application of provision in liability policy limiting the amount of insurer's liability to one person. 13 A.L.R.3d 1228.

Construction and effect of clause in liability policy voiding policy while insured vehicles are being used more than a specified distance from principal garage. 29 A.L.R.2d 514.

Construction and effect of medical payments and funeral expenses clauses of liability policy. 42 A.L.R.2d 983.

Construction of provision of liability insurance policy excluding injuries in connection with "structural alteration" of premises. 37 A.L.R.3d 1421.

Construction and effect of provision of homeowner's premises, or personal liability insurance policy covering or excluding watercraft. 26 A.L.R.4th 967.

Construction of statutory provision governing rejection or waiver of uninsured motorist coverage. 55 A.L.R.3d 216.

Coverage and exclusions under liability policy issued to municipal corporation or similar governmental body. 23 A.L.R.3d 1282; 30 A.L.R.5th 699.

Coverage of claim for wrongful death of insured by uninsured motorist clause. 26 A.L.R.3d 935.

Coverage under premises liability insur-

ance of injury sustained on or in connection with sidewalks or ways adjacent to certain property. 23 A.L.R.3d 1230.

Doctrine of estoppel or waiver as available to bring within coverage of insurance policy risks not covered by its terms or expressly excluded therefrom. 1 A.L.R.3d 1139.

Effect of advance payment by tortfeasor's liability insurer to injured claimant. 25 A.L.R.3d 1091.

Failure to read liability insurance policy as affecting right to have it reformed. 81 A.L.R.2d 7.

False statements favorable to defense, made and persisted in by insured, as breach of cooperation clause. 79 A.L.R.2d 1040.

Insurable interest for liability insurance. 1 A.L.R.3d 1193.

Insurance carrier's liability for part of employer's liability attributable to violation of law and other misconduct on his part. 1 A.L.R.2d 407.

Insured's cooperation with claimant in establishing valid claim against insurer as breach of cooperation clause. 8 A.L.R.3d 1345.

Insured's misrepresentation or misstatement as to his name or marital status as ground for avoiding liability insurance. 27 A.L.R.3d 849.

Insured's submission to service of process as breach of cooperation clause of liability policy. 66 A.L.R.2d 1238.

Insurer's denial of renewal of policy: waiver and estoppel. 85 A.L.R.2d 1208.

Insurer's failure to pay amount of admitted liability as precluding reliance on statute of limitations. 41 A.L.R.3d 1111.

Insurer's previous custom in giving notice of due date of premiums as affecting its right to declare liability policy forfeited or canceled for failure to pay premium. 52 A.L.R.2d 1157.

Liability as between automobile liability insurers one or more of whose policies provide against any liability if there is other insurance. 46 A.L.R.2d 1163.

Liability as between automobile liability insurers where one of the policies has an "excess insurance" clause and the other a

"proportionate" or "pro rata" clause. 76 A.L.R.2d 502.

Liability insurance: insurable interest. 1 A.L.R.3d 1193.

Liability insurance policy as covering insured's obligation to indemnify, or make contributions to, cotortfeasor. 4 A.L.R.3d 620.

Liability insurer's duty to defend action against an insured after insurer's full performance of its payment obligations under policy. 27 A.L.R.3d 1057.

Liability insurer's duty to pay injured person as affected by appeal or grant of new trial, or pendency of appeal or motion for new trial, from judgment against insured, or by the fact that time for appeal or motion for new trial has not expired. 31 A.L.R.3d 899.

Liability insurer's negligence or bad faith in conducting defense as ground of liability to insured. 34 A.L.R.3d 533.

Liability insurer's refusal to assume defense of action against insured upon ground that claim upon which action is based is not within coverage of policy as excusing compliance with cooperation and assistance provision. 49 A.L.R.2d 694.

Liability insurer's post loss conduct as waiver of, or estoppel to assert, "no-action" clause. 68 A.L.R.4th 389.

Liability insurer's rights and duties as to defense and settlement as affected by its having issued policies covering parties who have conflicting interests. 18 A.L.R.3d 482.

Liability insurer's right to open or set aside, or contest matters relating to merits of, judgment against insured entered in action in which insurer did not appear or defend. 27 A.L.R.3d 350.

Limitation of amount of coverage under automobile liability policy as affected by fact that policy covers more than one vehicle. 37 A.L.R.3d 1263.

Materiality of false statements by applicant for automobile insurance as to license revocations or suspensions or traffic violations. 89 A.L.R.2d 1027.

Meaning of term "radius" employed in motor vehicle liability policy as descriptive of area, location or distance. 10 A.L.R.2d 605.

Medical payments and funeral expenses clauses of liability policy. 42 A.L.R.2d 983.

Misrepresentation by applicant for automobile liability insurance as to ownership of vehicle as material to risk. 33 A.L.R.2d 948.

Omnibus clause of automobile liability policy as covering accidents caused by third person who is using car with consent of permittee of named insured. 4 A.L.R.3d 10.

Policy provision extending coverage to comply with financial responsibility act as applicable to insured's first accident. 8 A.L.R.3d 388.

Potential liability of insurer under liability

policy as subject of attachment. 33 A.L.R.3d 992.

Pretrial examination or discovery to ascertain from defendant in action for injury, death, or damages, existence and amount of liability insurance and insurer's identity. 13 A.L.R.3d 822.

Reduction of coverage by amounts payable under medical expense insurance. 24 A.L.R.3d 1353.

Reformation of motor vehicle policy by adding exclusionary provision relating to age of operator. 83 A.L.R.2d 1236.

Remedies and measure of damages for wrongful cancellation of liability and property insurance. 34 A.L.R.3d 385.

Renewal policy issued without calling insured's attention to reduction in the policy coverage, as subject to reformation to effect greater coverage in earlier policy. 91 A.L.R.2d 546.

Representations as to age or identity of persons who will drive vehicle, or as to extent of their relative use, as avoiding coverage under automobile insurance policy. 29 A.L.R.3d 1139.

Right of tortfeasor or liability insurer to credit for amounts already disbursed to injured party under medical payments or funeral expense clause in liability policy. 11 A.L.R.3d 1115.

Scope of provision in liability policy issued to municipal corporation of similar governmental body limiting coverage to injuries arising out of construction, maintenance, or repair work. 30 A.L.R.5th 699.

Scope of provision of automobile liability insurance policy excluding liability for damage to property in charge of insured, or variation of such provision. 10 A.L.R.3d 515.

Statute designed to prevent avoidance of automobile liability policy by reason of exclusions, conditions or other terms. 1 A.L.R.2d 822.

Stipulated period of time coverage of insurance policy as affected by countersigning subsequent to specified commencement date. 22 A.L.R.2d 984; 37 A.L.R.3d 933.

Sufficiency of evidence, in personal injury action, to prove future pain and suffering and to warrant instructions to jury thereon. 18 A.L.R.3d 10.

Sufficiency of evidence, in personal injury action, to prove impairment of earning capacity and to warrant instructions to jury thereon. 18 A.L.R.3d 88.

Sufficiency of evidence, in personal injury action, to prove permanence of injuries and to warrant instructions to jury thereon. 18 A.L.R.3d 170.

Time limitations as to claims based on uninsured motorist clause. 28 A.L.R.3d 580.

Trailers as affecting automobile insurance. 31 A.L.R.2d 298.

What constitutes "trailer" within coverage or exclusion provision of automobile liability policy. 65 A.L.R.3d 804.

Trivial nature of personal injury as excusing compliance with liability insurance policy provision requiring notice to insurer. 39 A.L.R.3d 593.

Uninsured and underinsured motorist coverage: validity, construction, and effect of policy provision purporting to reduce coverage by amount paid or payable under workers' compensation law. 31 A.L.R.5th 116.

Validity and construction of liability policy provision requiring insured to reimburse insurer for payments made under policy. 29 A.L.R.3d 291.

Validity and construction of "no-fault" automobile insurance plans. 42 A.L.R.3d 229.

Validity and construction of "other insurance" provisions. 28 A.L.R.3d 551.

Validity and construction of requirement that there be "physical contact" with unidentified or hit-and-run vehicle. 25 A.L.R.3d 1299.

What constitutes an "uninsured" or "unknown" vehicle or motorist, within uninsured motorist coverage. 24 A.L.R.4th 63.

Construction and application of provision of liability insurance policy expressly excluding injuries intended or expected by insured. 31 A.L.R.4th 957.

Liability insurance: intoxication or other mental incapacity avoiding application of clause in liability policy specifically exempting coverage of injury or damage caused intentionally by or at direction of insured. 33 A.L.R.4th 983.

Acts in self-defense as within provision of liability insurance policy expressly excluding coverage for damage or injury intended or expected by insured. 34 A.L.R.4th 761.

Criminal conviction as rendering conduct for which insured convicted within provision of liability insurance policy expressly excluding coverage for damage or injury intended or expected by insured. 35 A.L.R.4th 1063.

Validity, under insurance statutes, of coverage exclusion for injury to or death of insured's family or household members. 52 A.L.R.4th 18.

What constitutes use of vehicle "in the automobile business" within exclusionary clause of liability policy. 56 A.L.R.4th 300.

Partnership or joint venture exclusion in contractor's or other similar comprehensive general liability insurance policy. 57 A.L.R.4th 1155.

Liability insurance: What is "claim" under deductibility-per-claim clause. 60 A.L.R.4th 983.

Automobile insurance: umbrella or catastrophe policy automobile liability coverage as affected by primary policy "other insurance" clause. 67 A.L.R.4th 14.

What constitutes theft within automobile theft insurance policy — modern cases. 67 A.L.R.4th 82.

Liability insurer's postloss conduct as waiver of, or estoppel to assert, "no-action" clause. 68 A.L.R.4th 389.

Liability insurance coverage for violation of antipollution laws. 87 A.L.R.4th 444.

Who is "executive officer" of insured within liability insurance policy. 1 A.L.R.5th 132.

Validity, construction, application, and effect of statute requiring conditions, in addition to expiration of time, for reinstatement of suspended or revoked driver's license. 2 A.L.R.5th 725.

Event triggering liability insurance coverage as occurring within period of time covered by liability insurance policy where injury or damage is delayed — modern cases. 14 A.L.R.5th 695.

Uninsured and underinsured motorist coverage: recoverability, under uninsured or underinsured motorist coverage, of deficiencies in compensation afforded injured party by tortfeasor's liability coverage. 24 A.L.R.4th 13.

Automobile insurance coverage for drive-by shootings and other incidents involving the intentional discharge of firearms from moving motor vehicles. 41 A.L.R.5th 91.

Validity, construction, and application of provision in automobile liability policy excluding from coverage injury to, or death of, employee of insured. 43 A.L.R.5th 149.

27-1-13-8. Liabilities and reserves. — In estimating the condition of any company which makes insurance comprised within class 2 or class 3 of IC 27-1-5-1, the department shall allow only such investments as assets as are authorized by the laws of this state at the date of the investigation, but unpaid premiums on policies or renewals written within three (3) months shall be admitted as available resources. It shall charge as liabilities in addition to all other outstanding indebtedness of the company the capital stock, if any, and the following:

- (a) The premium reserve on policies in force equal to fifty percent (50%) of the gross premiums charged for covering risks, less the reserve

computed by the same method, on reinsurance in force. However, the department may, in its discretion, charge a premium reserve equal to the unearned portions of the gross premium charged by computing on each respective risk from the date of the issuance of the policy, less the reserve, computed by the same method, on reinsurance in force.

(b) In the case of policies of marine or inland navigation or transportation insurance it shall charge as a liability fifty percent (50%) of the amount of the premiums written in such policies upon yearly risks and upon risks covering not more than one (1) passage not terminated and the full amount of premiums written in policies upon all other such risks not terminated.

(c) The reserve for outstanding losses at least equal to the aggregate estimated amounts due or to become due on account of all losses or claims of which the company has received notice. However, the loss reserve shall also include the estimated liability on any notices received by the company of the occurrence of any event which may result in a loss and the estimated liability for all losses which have occurred but on which no notice has been received. For the purpose of such reserves, the company shall keep a complete and itemized record showing all losses and claims on which it has received notice, including all notices received by it of the occurrence of any event which may result in a loss.

(d) Any other reserves as are required by or provided for in the annual statement blanks adopted by the National Association of Insurance Commissioners and furnished to companies under IC 27-1-3-13.

(e) Whenever, in the judgment of the department, the loss reserves calculated in accordance with subsections (a), (b), (c), and (d) are inadequate, it may in its discretion require a company to maintain additional reserves. [Acts 1935, ch. 162, § 179, p. 588; P.L.260-1983, § 7.]

Cross References. Applicability to farmers' mutual insurance companies, IC 27-5-3.

27-1-13-8.5. Minimum standards for the establishment of reserves.

— The department shall adopt rules under IC 4-22-2 to prescribe minimum standards for the establishment of reserves as required by the National Association of Insurance Commissioners or its successor organization for insurers writing Class 2 and Class 3 lines of business. [P.L.116-1194, § 28; P.L.130-1994, § 21.]

27-1-13-9. Trading in goods prohibited. — No company shall directly or indirectly deal or trade in buying or selling goods, wares, merchandise or other commodities, except such as may have been insured by it and such as may be sold under judicial process or otherwise, in which, or in the profits of the sale of which, it may be interested by reason of having previously become insurers of the same or of some share or portion thereof. [Acts 1935, ch. 162, § 180, p. 588.]

27-1-13-10. Conditions to qualification as Indiana rating bureau — Representation of domestic insurers — Approval of insurance commissioner. — Any insurance rating bureau which files any rating plan, manual, classifications, rules or rates for fire, marine or inland marine and allied risks insurance with the insurance department of the state of Indiana for its members or subscribers shall as a condition precedent to the filing of an application to act as a rating bureau in the state of Indiana, establish in its constitution or by-laws the right of domestic insurers organized and operating under the laws of the state of Indiana, who are members of such rating bureau, to have representation on the board of directors, board of governors or any other governing body whatsoever, controlling said rating bureau, in an amount of not less than 33 $\frac{1}{3}$ % of all of the voting members of such governing body. The constitution and by-laws of said rating bureau shall also contain the condition that all meetings of the governing body of said rating bureau shall be held either in Chicago, Illinois or in Indianapolis, Indiana; Provided, however, That nothing contained herein shall limit the representation of such domestic insurers on said governing body. Indiana representatives on such governing body shall be nominated by special meeting of the Indiana members of such rating bureau at least 10 days preceding the election of representatives on the governing body of such rating bureau. The insurance commissioner of the state of Indiana shall have no right to approve any such rating bureau as a rating bureau in the state of Indiana until the aforesaid conditions are met by such bureau. [Acts 1935, ch. 162, § 180a, as added by Acts 1947, ch. 269, § 1.]

Cross References. Rates and rating organizations, IC 27-1-22. Representation of domestic insurers on governing boards of rating bureaus of which they are members.

Opinions of Attorney General. The purpose of this section is to require representation. 1947, No. 60, p. 299.

27-1-13-11. Meetings of governing body — Complaints of aggrieved persons — Hearing — Rectification. — At all such meetings of the governing body held at Indianapolis, Indiana, as set out in section 10 [IC 27-1-13-10] of this chapter, any aggrieved policyholder agent company representative or any other aggrieved person may appear before such meeting to have complaints heard in full, and it shall be the duty of such rating bureau to rectify such conditions as are justly complained of in such manner as is reasonably possible. [Acts 1935, ch. 162, § 180b, as added by Acts 1947, ch. 269, § 2; P.L.252-1985, § 69.]

27-1-13-12. Representation of Indiana insurers — Division and numbers. — The representation of Indiana insurers on such governing body of such rating bureau described in section 10 [IC 27-1-13-10] of this chapter shall be equally divided as between domestic stock and mutual insurers, and the number of members on such governing body of such rating bureau shall be fixed so this can be accomplished. [Acts 1935, ch. 162, § 180c, as added by Acts 1947, ch. 269, § 3; P.L.252-1985, § 70.]

27-1-13-13. [Repealed.]

Compiler's Notes. This section, concerning separability of the provisions in this chapter, was repealed by P.L.108-1985, § 1.

27-1-13-14. Definitions. — (a) As used in this section:

“Casualty and liability insurance” means insurance included in Class II and Class III of IC 27-1-5-1.

“Qualified public transportation agency” means any of the following:

- (1) A public transportation corporation established under IC 36-9-4.
- (2) An agency of a city that provides for public transportation.
- (3) An agency of a town that provides for public transportation.
- (4) An agency of a township that provides for public transportation.
- (5) Any person who provides public transportation to a county under an agreement with the county.

(b) A company authorized to issue casualty and liability insurance policies in Indiana may sell group casualty and liability insurance to two (2) or more qualified public transportation agencies only for the purpose of insuring their public transportation functions. [IC 27-1-13-14, as added by P.L.256-1983, § 1.]

27-1-13-15. Blanket policy for planned unit developments. —

(a) As used in this section, “planned unit development” means a planned unit development provided for in an ordinance adopted under IC 36-7-4-713.

(b) As used in this section, “property and casualty insurance” means one (1) or more of the types of insurance described in IC 27-1-5-1, Class 2 and Class 3.

(c) An insurance company may issue a blanket policy of property and casualty insurance to an association or a nonprofit corporation composed of the owners of the property within a planned unit development for the purpose of insuring:

- (1) The association or nonprofit corporation;
- (2) The owners of the property within the planned unit development;
- (3) The executive body of the association or nonprofit corporation;
- (4) The managing agent of the association or nonprofit corporation, if any;
- (5) All persons who act as agents or employees of:
 - (A) The association or nonprofit corporation;
 - (B) The owners of the property;
 - (C) The executive body; or
 - (D) The managing agent;

with respect to the planned unit development; and

(6) All other persons entitled to occupy any unit or other portion of the planned unit development, including property owners; against losses under this subsection, including loss or damage to property within the planned unit development and loss of use or occupancy.

(d) An association or a nonprofit corporation composed of the owners of all of the property within a planned unit development is authorized to purchase an insurance policy described in subsection (c). [P.L.116-1994, § 29.]

CHAPTER 14

INSURANCE LAW — FRATERNAL BENEFICIARY ASSOCIATIONS

27-1-14-1 — 27-1-14-28. [Repealed.]

Compiler's Notes. This chapter, concerning fraternal beneficiary associations, was repealed by P.L.262-1985, § 2. For present similar provisions, see IC 27-11-1-1 — IC 27-11-9-4.

Section 3 of P.L.262-1985 provides: "(a) Any incorporated society authorized to transact business in Indiana under IC 27-

1-14 on December 31, 1985, is not required to reincorporate under IC 27-11, as added by this act.

"(b) Societies described in subsection (a) may continue to transact business until April 30, 1986, and their licenses may be renewed annually under IC 27-11, as added by this act."

CHAPTER 15

INSURANCE LAW — AGENTS OTHER THAN LIFE
INSURANCE AGENTS

27-1-15-1 — 27-1-15-9. [Repealed.]

Compiler's Notes. This chapter, concerning agents other than life insurance agents, was repealed by Acts 1977, P.L. 280, § 3. For

present similar provisions, see IC 27-1-15.5-1 — IC 27-1-15.5-18.

CHAPTER 15.5

LICENSING OF INSURANCE AGENTS

SECTION.

- 27-1-15.5-1. Scope and applicability of chapter.
- 27-1-15.5-2. Definitions.
- 27-1-15.5-3. Licenses required — Exemptions — Limited insurance representative's license — Licensing of corporations or limited liability companies — Writing controlled business — Paying commissions to unlicensed agents — Contents of license — Duration of license.
- 27-1-15.5-3.1. Limitation on receipt of compensation when agent acts as consultant — Disclosure of compensation by risk managers.
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- 27-1-15.5-4.1. Qualifications for nonresident license by applicant who does not hold resident license in home state.
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- 27-1-15.5-8. License denial, nonrenewal, or termination — Disciplinary sanctions.
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- 27-1-15.5-10. Surrender of license — Loss or destruction of license.
- 27-1-15.5-11. [Repealed.]
- 27-1-15.5-11.1. Reports to commissioner.
- 27-1-15.5-12. Representatives of fraternal benefit societies.
- 27-1-15.5-13. Limited insurance representatives listing before July 1, 1977.
- 27-1-15.5-14. [Repealed.]
- 27-1-15.5-15. Temporary licensing.
- 27-1-15.5-16. Rules and regulations.

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- 27-1-15.5-17. Exemptions.
 27-1-15.5-18. Solicitors.
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 27-1-15.5-19. Programs of study [effective January 1, 2000].
 27-1-15.5-20. Insurance agent education and continuing education advisory council.
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- Contents — Suspension of license — Reinstatement.
 27-1-15.5-23. Enforcement of provisions concerning sale of life insurance policies and annuities contracts — Powers of commissioner and director of department of financial institutions.
 27-1-15.5-24. Agent must have insurable interest to be beneficiary or owner of life insurance policy or annuity contract.

27-1-15.5-1. Scope and applicability of chapter. — This chapter governs the qualifications and procedures for the licensing of insurance agents, surplus lines agents, insurance consultants and limited insurance representatives. This chapter applies to all kinds of insurance and types of insurers including, but not limited to, life, health, property, liability, credit, title, fire, or marine operating on a stock, mutual, reciprocal, fraternal, hospital, or medical service plan. For the purposes of this chapter, all references to insurance shall include annuities unless context otherwise requires. [IC 27-1-15.5-1, as added by Acts 1977, P.L. 280, § 2.]

Indiana Law Review. Developments in Insurance Law: Agents' and Brokers' Liability, 20 Ind. L. Rev. 231 (1987).

Collateral References. 43 Am. Jur. 2d Insurance § 32.

Necessity of expert testimony to show standard of care in negligence action against insurance agent or broker. 52 A.L.R.4th 1232.

Liability of tortfeasor's insurance agent or broker to injured party for failure to procure or maintain liability insurance. 72 A.L.R.4th 1095.

Estoppel of, or waiver by, issuer of life insurance policy to assert defense of lack of insurable interest. 86 A.L.R.4th 828.

Liability of insurer or agent of insurer for failure to advise insured as to coverage needs. 88 A.L.R.4th 249.

Liability of insurance agent or broker on ground of inadequacy of liability-insurance coverage procured. 60 A.L.R.5th 165.

27-1-15.5-2. Definitions. — (a) The definitions set forth in this section apply throughout this chapter.

(b) "Insurance agent" means any individual, corporation, or limited liability company who, for compensation, acts or aids in any manner in:

- (1) soliciting applications for insurance; or
- (2) negotiating a policy of insurance on behalf of an insurer.

(c) An individual, a corporation, or a limited liability company:

- (1) who is not licensed as an insurance agent, surplus lines insurance agent, or limited insurance representative; and
- (2) who meets the definition of insurance agent in subsection (b);

shall be an insurance agent within the intent of this chapter, and shall thereby become liable for all the duties, requirements, liabilities, and penalties to which such licensed agents are subject.

(d) "Surplus lines insurance agent" means an individual, a corporation, or a limited liability company who solicits, negotiates, or procures from an insurance company not licensed to transact business in Indiana an insur-

ance policy that cannot be procured from insurers licensed to do business in Indiana.

(e) "Limited insurance representative" means an individual, a corporation, or a limited liability company authorized by the commissioner to solicit or negotiate contracts for a particular line of insurance:

(1) that:

(A) is designated in this chapter; or

(B) the commissioner may by regulation consider essential for the transaction of business in this state; and

(2) that does not require the professional competency demanded for an insurance agent's license.

(f) "Consultant" means an individual, a corporation, or a limited liability company who:

(1) holds himself or itself out to the public as being engaged in the business of offering; or

(2) for a fee, offers;

any advice, counsel, opinion or service with respect to the benefits, advantages, or disadvantages promised under any policy of insurance that could be issued in Indiana.

(g) "Bureau" refers to the child support bureau of the division of family and children established in IC 12-17-2-5.

(h) "Delinquent" means at least:

(1) two thousand dollars (\$2,000); or

(2) three (3) months;

past due on payment of court ordered child support.

(i) "License" has the meaning set forth in IC 25-1-2-6. [IC 27-1-15.5-2, as added by Acts 1977, P.L. 280, § 2; P.L.223-1993, § 1; P.L.1-1994, § 131; P.L.255-1995, § 1; P.L.23-1996, § 21; P.L.185-1996, § 1.]

Cross References. Bank's power to act as agent, IC 28-1-11-2.

Indemnification of agents authorized, IC 27-1-7-2.

Unlawful restrictions with respect to agents, IC 27-4-3.

NOTES TO DECISIONS

ANALYSIS

Duties of agent.
Insurance broker.
Insured's agent.
Insurer's agent.
Powers of agents.
Written authority.

Duties of Agent.

Where insurance policy was to expire on a certain date, if there was any duty to give insured notice of expiration or procure other insurance, it was the duty of the agent and not the insurance company. *Augustine v. First Fed. Sav. & Loan Ass'n*, 270 Ind. 238, 66 Ind. Dec. 673, 384 N.E.2d 1018 (1979).

Insurance Broker.

The negligence of an insurance broker may not be imputed to the insurance company, for he acts as agent for the insured. *Automobile Underwriters, Inc. v. Hitch*, 169 Ind. App. 453, 53 Ind. Dec. 319, 349 N.E.2d 271 (1976).

Insured's Agent.

A provision in an insurance policy that the agent of the insurer would be considered as the agent of the insured for certain purposes was void. *United States Benevolent Soc'y v. Watson*, 41 Ind. App. 452, 84 N.E. 29 (1908).

A person who was instructed to procure insurance for another was the agent of the person giving such instruction, and not of the company issuing the policy. *Michigan Mut.*

Insured's Agent. (Cont'd)

Life Ins. Co. v. Thompson, 44 Ind. App. 180, 86 N.E. 503 (1908).

Insurer's Agent.

A person who acted for an insurance company in procuring a policy of insurance was the agent of the company. *Indiana Ins. Co. v. Hartwell*, 123 Ind. 177, 24 N.E. 100 (1890); *McCord v. Illinois Nat'l Fire Ins. Co.*, 47 Ind. App. 602, 94 N.E. 1053 (1911); *German Fire Ins. Co. v. Greenwald*, 51 Ind. App. 469, 99 N.E. 1011 (1912); *Western Ins. Co. v. Ashby*, 53 Ind. App. 518, 102 N.E. 45 (1913); *Humboldt Fire Ins. Co. v. Ashby*, 57 Ind. App. 682, 108 N.E. 150 (1915); *Globe & Rutgers Fire Ins. Co. v. Hamilton*, 65 Ind. App. 541, 116 N.E. 597 (1917); *Johnson v. Schrepferman*, 67 Ind. App. 606, 119 N.E. 494 (1918); *Meridian Mut. Fire Ins. Co. v. Deffendoll*, 74 Ind. App. 501, 129 N.E. 253 (1920).

If an insurance company in another state sent policies of insurance to a person in this state to be delivered to the persons insured by said policies, with directions to collect the premiums, retain a commission, and to remit to such company, the person so acting was the agent of such company. *McCord v. Illinois Nat'l Fire Ins. Co.*, 47 Ind. App. 602, 94 N.E. 1053 (1911).

Evidence that a local agent had similar business relations with others and that the state agent had knowledge of the transactions and had gone over the applications did not prove the local agent was a general agent of the insurance company. *Thompson v. Michigan Mut. Life Ins. Co.*, 56 Ind. App. 502, 105 N.E. 780 (1914).

If a general agent of an insurance company resigned or was discharged, and the insured

had no notice thereof, and continued to act through such agent, in regard to the insurance business, the insurance company was bound thereby. *Georgia Life Ins. Co. v. Otter Creek Coal Co.*, 67 Ind. App. 277, 119 N.E. 151 (1918).

Powers of Agents.

Officers and agents of insurance companies have no right to waive the provisions of the charter of the company relative to making contracts. *Leonard v. American Ins. Co.*, 97 Ind. 299 (1884).

An insurance company is bound by the acts of agents and clerks issuing policies and persons dealing with such agents and clerks are not required to inquire into their authority. *German Fire Ins. Co. v. Columbia Encaustic Tile Co.*, 15 Ind. App. 623, 43 N.E. 41 (1896).

Written Authority.

An applicant for life insurance is presumed to know that under the law of Indiana the agent's authority to represent the insurer is required to be in writing. *State Life Ins. Co. v. Thiel*, 107 Ind. App. 75, 20 N.E.2d 693 (1939).

In suit on liability policy where insurance company claimed that policy had been canceled for nonpayment of premium and plaintiff claimed that premium had been paid to agent and it was shown that plaintiff had obtained policy through such person and also a preceding policy, there was no merit in contention of insurance company that such person was not its agent under the provisions of this section because there was no evidence in writing authorizing such person to act as its agent, such contention being made for the first time in the reply brief. *Old Line Auto. Insurers v. Kuehl*, 127 Ind. App. 445, 141 N.E.2d 858 (1957).

Collateral References. Agents or brokers, public regulation or control. 10 A.L.R.2d 950.

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 A.L.R.3d 872.

Insurance agent's right to commissions on renewal premiums. 36 A.L.R.3d 958.

Insurance agents' and brokers' professional liability insurance. 55 A.L.R.5th 681.

27-1-15.5-3. Licenses required — Exemptions — Limited insurance representative's license — Licensing of corporations or limited liability companies — Writing controlled business — Paying commissions to unlicensed agents — Contents of license — Duration of license. — (a) A person may not act as or hold himself out to be an insurance agent, surplus lines insurance agent, limited insurance representative, or consultant unless he is duly licensed. An insurance agent, surplus lines insurance agent, or limited insurance representative may not make application for, procure, negotiate for, or place for others any policies for any kinds of insurance as to which he is not then qualified and duly licensed. An

insurance agent and a limited insurance representative may receive qualification for a license in one (1) or more of the kinds of insurance defined in Class I, Class II, and Class III of IC 27-1-5-1. A surplus lines insurance agent may receive qualification for a license in one (1) or more of the kinds of insurance defined in Class II and Class III of IC 27-1-5-1 from insurers that are authorized to do business in one (1) or more states of the United States of America but which insurers are not authorized to do business in Indiana, whenever, after diligent effort, as determined to the satisfaction of the insurance department, such licensee is unable to procure the amount of insurance desired from insurers authorized and licensed to transact business in Indiana. The commissioner may issue a limited insurance representative's license to the following without examination:

- (1) a person who is a ticket-selling agent of a common carrier who will act only with reference to the issuance of insurance on personal effects carried as baggage, in connection with the transportation provided by such common carrier;
- (2) a person who will only negotiate or solicit limited travel accident insurance in transportation terminals;
- (3) a person who will only negotiate or solicit insurance covered by IC 27-8-4;
- (4) a person who will only negotiate or solicit insurance under Class II(j); or
- (5) to any person who will negotiate or solicit a kind of insurance that the commissioner finds does not require an examination to demonstrate professional competency.

(b) A corporation or limited liability company may be licensed as an insurance agent, surplus lines insurance agent, or limited insurance representative. Every officer, director, stockholder, or employee of the corporation or limited liability company personally engaged in Indiana in soliciting or negotiating policies of insurance shall be registered with the commissioner as to its license, and each such member, officer, director, stockholder, or employee shall also qualify as an individual licensee. However, this section does not apply to a management association, partnership, or corporation whose operations do not entail the solicitation of insurance from the public.

(c) The commissioner may not grant, renew, continue or permit to continue any license if he finds that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. "Controlled business" means:

- (1) insurance written on the interests of the licensee or those of his immediate family or of his employer; or
- (2) insurance covering himself or members of his immediate family or a corporation, limited liability company, association, or partnership, or the officers, directors, substantial stockholders, partners, members, managers, employees of such a corporation, limited liability company, association, or partnership, of which he is or a member of his immediate family is an officer, director, substantial stockholder, partner, member, manager, associate, or employee.

However, this section does not apply to insurance written on interests insured in connection with or arising out of credit transactions. Such a

license shall be deemed to have been or intended to be used for the purpose of writing controlled business, if the commissioner finds that during any twelve (12) month period the aggregate commissions earned from such controlled business has exceeded twenty-five percent (25%) of the aggregate commission earned on all business written by such applicant or licensee during the same period.

(d) An insurer, insurance agent, surplus lines insurance agent, or limited insurance representative may not pay any commission, brokerage, or other valuable consideration to any person for services as an insurance agent, surplus lines insurance agent, or limited insurance representative within Indiana, unless the person held, at the time the services were performed, a valid license for that kind of insurance as required by the laws of Indiana for such services. A person, other than a person duly licensed by the state of Indiana as an insurance agent, surplus lines insurance agent, or limited insurance representative, may not, at the time such services were performed, accept any such commission, brokerage, or other valuable consideration. However, any such person duly licensed under this chapter may:

(1) pay or assign his commissions or direct that his commissions be paid:

(A) to a partnership of which he is a member, an employee, or an agent; or

(B) to a corporation of which he is an officer, employee, or agent; or

(2) pay, pledge, assign, or grant a security interest in the person's commission to a lending institution as collateral for a loan if the payment, pledge, assignment, or grant of a security interest is not, directly or indirectly, in exchange for insurance services performed.

This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any person entitled thereto under this section.

(e) The license shall state the name and resident address of the licensee, date of issue, the renewal or expiration date, the line or lines of insurance covered by the license, and such other information as the commissioner considers proper for inclusion in the license.

(f) All licenses issued under this chapter shall continue in force not longer than twenty-four (24) months. The insurance department shall establish procedures for the renewal of licenses. A license may be renewed after it expires as follows:

(1) A person who applies for a license renewal not more than twenty-four (24) months after the person's license expires must:

(A) satisfy the requirements of IC 27-1-15.5-7.1(b); and

(B) pass to the department's satisfaction the laws portion of the examination required of an applicant under IC 27-1-15.5-4(g)(5) for the type of license for which the person seeks renewal.

(2) A person who applies for a license renewal more than twenty-four (24) months after it expires must successfully complete the education requirements of IC 27-1-15.5-4(e) and pass to the department's satisfaction the examination required of an applicant for the type of license for which the person seeks renewal.

All license renewals must be accompanied by payment of the renewal fee as provided in section 4(d) [IC 27-1-15.5-4(d)] of this chapter.

(g) A license as an insurance agent, surplus lines insurance agent, or limited insurance representative may not be required of the following:

(1) Any regular salaried officer or employee of an insurance company, or of a licensed insurance agent, surplus lines insurance agent, or limited insurance representative if such officer or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.

(2) Persons who secure and furnish information for the purpose of group or wholesale life insurance, or annuities, or group, blanket, or franchise health insurance, or for enrolling individuals under such plans or issuing certificates thereunder or otherwise assisting in administering such plans, where no commission is paid for such service.

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company, provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.

(h) An insurer shall require that a person who, on behalf of the insurer, makes any oral, written, or electronic communication with an individual regarding insurance coverage, rates, benefits, or policy terms, for the purpose of soliciting insurance shall be licensed under this chapter.

(i) A violation of subsection (h) is deemed an unfair method of competition and an unfair and deceptive act and practice in the business of insurance subject to the provisions of IC 27-4-1-4. [IC 27-1-15.5-3, as added by Acts 1977, P.L. 280, § 2; 1982, P.L. 163, § 1; P.L.8-1993, § 414; P.L.116-1994, § 30; P.L.255-1995, § 2; P.L.185-1996, § 2; P.L.91-1998, § 5.]

Opinions of Attorney General. In cases of merger, insurance department has authority under IC 27-1-9-11 to transfer duly certified and licensed agents of affiliated compa-

nies to surviving company without necessitating new applications or relicensing of such agents. 1948, No. 51, p. 286 (rendered under former IC 27-1-15-4).

27-1-15.5-3.1. Limitation on receipt of compensation when agent acts as consultant — Disclosure of compensation by risk managers.

— (a) An insurance agent may not receive compensation for the solicitation, sale, issuance, or renewal of any insurance policy issued to any person or entity for whom the insurance agent, for a fee, acts as a consultant for that policy unless:

(1) the agent provides to the insured a written agreement in accordance with section 7(c) [IC 27-1-15.5-7(c)] of this chapter; and
(2) the agent discloses to the insured the following information prior to the solicitation, sale, issuance, or renewal of any policy:

(A) the fact that the agent will receive compensation for the sale of the policy; and

(B) the method of compensation.

(b) The requirements of this subsection are in addition to the requirements under subsection (a). A risk manager described in IC 27-1-22-2.5(b)(2) shall, before providing risk management services to an exempt commercial policyholder, disclose in writing to the exempt commercial policyholder whether the risk manager will receive or expects to receive any commission, fee, or other consideration from an insurer in connection with the purchase of a commercial insurance policy by the exempt commercial policyholder. However, if the risk manager charges the exempt commercial policyholder a fee for risk management services, the risk manager shall disclose in writing to the exempt commercial policyholder the specific amount of any commission, fee, or other consideration that the risk manager may receive from an insurer in connection with the purchase of the policy. The risk manager shall, before providing the risk management services, obtain from the exempt commercial policyholder a written acknowledgement of the disclosures made by the risk manager to the exempt commercial policyholder under this subsection. [P.L.185-1996, § 3; P.L.268-1999, § 3.]

27-1-15.5-3.2. Disciplinary actions or warnings by other states to be reported. — An insurance agent, a surplus lines insurance agent, a limited insurance representative, and a consultant shall report to the commissioner any disciplinary action, including any warning, taken by other states within ten (10) business days after the action is taken. [P.L.255-1995, § 3.]

27-1-15.5-3.5. Prearranged funeral insurance — Licensed representative — Limitation of business — Requirements. — (a) As used in this section, “prearranged funeral insurance” means insurance that is used to fund any of the following:

- (1) A funeral trust under IC 30-2-10 and IC 30-2-13.
- (2) Any other arrangement for advance payment of funeral and burial expenses.

(b) Before making application for, procuring, negotiating for others, or placing for others prearranged funeral insurance, a person must be licensed as either of the following:

- (1) An insurance agent.
- (2) A limited insurance representative pursuant to all requirements of this chapter.

(c) A limited insurance representative must satisfy all of the following:

- (1) Be licensed under IC 25-15-4-3.
- (2) Be licensed under this chapter.
- (3) Have successfully completed a prelicensing course of study of at least twenty-four (24) hours required for a life only license. The course of study must be provided by a licensed prelicensing school approved by the commissioner.

(d) If after a person is licensed under this chapter as an insurance agent, the person wants to limit the person’s insurance business solely to the sale of prearranged funeral insurance, the person may request the commissioner to issue the person a limited insurance representative’s license under this chapter.

(e) If the commissioner receives a request from a person under subsection (d), the commissioner shall issue a limited insurance representative's license, subject to the provisions of this chapter relating to limited insurance representative licenses not inconsistent with this section.

(f) An agent who holds an insurance license and who wants to become a limited insurance representative under this section must do the following before the agent may change the agent's license status:

(1) The agent must show proof of having completed ten (10) hours of continuing education credit approved by the department.

(2) The agent must sign an affidavit supplied by the department that states the agent will sell only prearranged funeral insurance.

(g) A person issued a limited insurance representative's license under subsection (e) may sell only prearranged funeral insurance. [P.L.223-1993, § 2.]

27-1-15.5-3.6. Crop hail insurance — Multi-peril crop insurance — Licensing — Limited insurance representative. — (a) As used in this section, "crop hail insurance" means insurance that is used only in the event of hail related disasters to growing farm crops.

(b) As used in this section, "multi-peril crop insurance" means insurance that is:

(1) Used in the event of weather related disasters or insect infestations during the growing season; and

(2) Guaranteed by the Federal Crop Insurance Corporation.

(c) A person who wants to sell multi-peril crop insurance or crop hail insurance must be licensed under this chapter.

(d) If after a person is licensed under this chapter, the person wants to limit the person's insurance business solely to the sale of:

(1) Multi-peril crop insurance;

(2) Crop hail insurance; or

(3) Multi-peril crop insurance and crop hail insurance;

the person may request the commissioner to issue to the person a limited insurance representative's license under this chapter.

(e) If the commissioner receives a request from a person under subsection (d), the commissioner shall issue a limited insurance representative's license to the person, subject to the provisions of this chapter relating to limited insurance representative licenses not inconsistent with this section.

(f) An agent who holds an insurance license and who wants to become a limited insurance representative under this section must do the following before the agent may change the agent's license status:

(1) The agent must show proof of having completed ten (10) hours of continuing education credit approved by the department.

(2) The agent must sign an affidavit supplied by the department that states that the agent will sell only multi-peril crop insurance.

(g) A person issued a limited insurance representative's license under subsection (e) may sell only:

(1) Multi-peril crop insurance;

(2) Crop hail insurance; or

(3) Multi-peril crop insurance and crop hail insurance.

[P.L.223-1993, § 3.]

27-1-15.5-4. Application for license — Qualifications of applicants — Fees — Certificate of completion — Issuance of licenses. — (a) The commissioner may not issue, continue, or permit to continue any license of an insurance agent, surplus lines insurance agent, or limited insurance representative, except in compliance with this section.

(b) Application shall be made to the commissioner by the applicant on a form prescribed by the commissioner.

(c) Every applicant for an insurance agent or limited insurance representative license under this chapter must be eighteen (18) years or more of age.

(d) Each applicant shall pay a fee for each examination and license issued under this chapter.

(e) Each applicant for an insurance agent license shall file with the commissioner on a form prescribed by the commissioner a certification of completion certifying that the applicant has completed an insurance agent program of study registered with the commissioner under section 19 [IC 27-1-15.5-19] of this chapter not more than six (6) months before the application for the license is received by the commissioner. This subsection does not apply to applicants who are exempt from the examination under section 6 [IC 27-1-15.5-6] of this chapter and to applicants for a limited license under section 13 [IC 27-1-15.5-13] of this chapter.

(f) The department shall revoke the license of a person who fails to pay the required license fee when it is due.

(g) The commissioner may issue an insurance agent's license, or a limited insurance representative's license, to any duly qualified resident or nonresident of the state as follows:

(1) Resident. An applicant may qualify as a resident if he resides in Indiana or maintains his principal place of business in Indiana. Any license issued pursuant to any such application claiming residency for licensing purposes, as defined in this subdivision, in Indiana shall constitute an election of residency in Indiana and shall be void if the licensee, while holding a resident license in Indiana, also holds or makes application for a license, other than a nonresident license, in, or thereafter claims to be a resident of, any other state or other jurisdiction or ceases to be a resident of Indiana.

(2) Nonresident. Except as provided in section 4.1 [IC 27-1-15.5-4.1] of this chapter, an applicant may qualify for a license under this chapter as a nonresident only if he holds a resident license in another state of the United States or province of Canada. A license issued to a nonresident of Indiana shall grant the same rights and privileges afforded a resident licensee, except as otherwise provided. The commissioner shall not issue a license to any nonresident applicant until he files with the commissioner his designation of the commissioner, and his successors in office, to be his true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on

behalf of any interested person arising out of the applicant's insurance business in Indiana. Such designation shall constitute an agreement that such service of process is of the same legal force and validity as personal service of process in Indiana upon such person. Such service of process upon any such licensee in any such action or proceeding in any court of competent jurisdiction of Indiana, may be made by serving the commissioner with appropriate copies thereof and the payment to him of a fee of two dollars (\$2). The commissioner shall forward a copy of such process by registered or certified mail to the licensee at his last known address of record or principal place of business, and shall keep a record of all processes so served upon him. Service of process upon any such licensee in any action or proceeding instituted by the commissioner under this subdivision shall be made by the commissioner by mailing such process by registered or certified mail to the licensee at his last known address of record or principal place of business. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten (10) days thereafter to the licensee at his last known address of record or principal place of business by registered or certified mail, return receipt requested. If the commissioner revokes or suspends any nonresident's license through a formal proceeding under this chapter, he shall promptly notify the appropriate commissioner of the licensee's residence of such action and of the particulars thereof. A nonresident of Indiana may be licensed without taking an otherwise required written examination if the commissioner of the state of the applicant's residence certifies, by facsimile signature and seal, that the applicant has passed a similar written examination, or has been a continuous holder prior to the time such written examination was required, of a license like the license being applied for in Indiana. An individual who is a nonresident of Indiana and is renewing the individual's nonresident license in Indiana shall, at the time of the renewal, provide to the department a certificate from the individual's state of residence affirming that the individual remains licensed and in good standing in the individual's state of residence. Whenever, by the laws, rules, or regulations of any other state or jurisdiction, any limitation of rights and privileges, conditions precedent, or other requirements are imposed upon residents of Indiana who are nonresident applicants or licensees of such other state or jurisdiction in addition to or in excess of those imposed on nonresidents under this chapter, the same such requirements shall be imposed upon such residents of such other state or jurisdiction.

(3) An applicant for a surplus lines insurance agent's license must be licensed in Indiana as a resident insurance agent qualified as to the line or lines to be written.

(4) An applicant for any license under this chapter must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.

(5) Except as provided in section 6 of this chapter, the commissioner shall subject each applicant for license as an insurance agent, surplus lines insurance agent, limited insurance representative, or consultant

to a written examination as to his competence to act as such licensee which he must personally take and pass to the satisfaction of the commissioner. If the applicant is a corporation, the examination shall be taken by each individual who is to be named in or registered as to the corporation. Each examination for a license shall be approved for use by the commissioner and shall reasonably test the applicant's knowledge as to the lines of insurance, policies, and transactions to be handled under the license applied for, of the duties and responsibilities of such a licensee, and of the pertinent insurance laws of Indiana. Examination for licensing shall be at such reasonable times and places as are designated by the commissioner. The commissioner or a person selected by him shall give, conduct, and grade all examinations in a fair and impartial manner and without discrimination as between individuals examined. The applicant must pass the examination with a grade determined by the commissioner to indicate satisfactory knowledge and understanding of the line or lines of insurance for which the applicant seeks qualification. Within ten (10) days after the examination, the commissioner shall inform the applicant as to whether or not the applicant has passed. Upon filing of the certificate of completion required under subsection (e) with the commissioner and the payment of a fee of five dollars (\$5) to the commissioner, formal evidence of said licensing shall be issued by the commissioner to the licensee within a reasonable time. An applicant who has failed to pass the examination for the license applied for may take a subsequent examination. Examination fees for subsequent examinations shall not be waived. The commissioner may by rule prescribe a course of study to be completed by each applicant prior to taking the written examination.

(6) If the commissioner finds that the applicant has not fully met the requirements for licensing, he shall refuse to issue the license and promptly notify the applicant, in writing, of such denial, stating the grounds therefor. If a license is refused, the commissioner shall promptly refund the license fee tendered with the license application. All examination fees accompanying the application for license as insurance agent, surplus lines insurance agent, limited insurance representative, and consultant shall be deemed earned and shall not be refundable.

(7) Every licensed agent shall notify the commissioner of any change in his residential or business address within thirty (30) days of the change. [IC 27-1-15.5-4, as added by Acts 1977, P.L. 280, § 2; 1980, P.L. 171, § 1; 1981, P.L. 242, § 1; 1982, P.L. 163, § 2; P.L.269-1987, § 1; P.L.116-1994, § 31; P.L.185-1996, § 4.]

Compiler's Notes. Although this section is not amended by P.L.268-1999, P.L.268-1999, § 22, effective July 1, 1999, provides: "(a) IC 27-1-3-15, IC 27-1-3-28, IC 27-1-15.5-4, IC 27-1-17-4, IC 27-1-20-21.3, IC 27-1-27-5, IC 27-6-6-4, IC 27-7-2-24, IC 27-8-1-13, IC 27-8-3-19, IC 27-8-3-20, and IC 27-11-9-1, all as amended by this act, apply upon receipt by

the commissioner of the department of insurance of the designation from the insurer of an agent for service of process.

"(b) This SECTION expires June 30, 2004."

Cross References. Fraudulent representations on application, misdemeanor, IC 27-8-3-21.

NOTES TO DECISIONS

In General.

Granting of an insurance brokerage license is in the sound discretion of the department of state, and a corporation is not entitled to receive, directly or indirectly, insurance commission or brokerage until it is duly licensed. Department of Fin. Insts. v. Johnson Chevrolet Co., 228 Ind. 397, 92 N.E.2d 714 (1950).

The mere fact that corporation intended to

engage in insurance business although not licensed as an insurance broker was not sufficient to entitle it to injunctive relief against a general order of the department of financial institutions with regard to sale of insurance. Until the corporation is licensed, no property right could be jeopardized. Department of Fin. Insts. v. Johnson Chevrolet Co., 228 Ind. 397, 92 N.E.2d 714 (1950).

27-1-15.5-4.1. Qualifications for nonresident license by applicant who does not hold resident license in home state. — Notwithstanding section 4(g)(2) [IC 27-1-15.5-4(g)(2)] of this chapter, an applicant for a nonresident license under this chapter may qualify for the nonresident license even though the applicant does not hold a resident license in another state of the United States or province of Canada if the state or province in which the applicant is a resident does not issue a resident license of the same type as the nonresident license the applicant seeks. [P.L.185-1996, § 5.]

27-1-15.5-5. Surplus lines agent requirements. — (a) Prior to issuance of a license as a surplus lines insurance agent, the applicant shall file with the commissioner, and thereafter for as long as the license remains in effect, shall keep in force a bond in the penal sum of not less than twenty thousand dollars (\$20,000) with an authorized corporate surety approved by the commissioner. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the penal sum thereof. No such bond shall be terminated unless at least thirty (30) days prior written notice thereof is given by the surety to the licensee and the commissioner. Upon termination of the license for which the bond was in effect, the commissioner shall notify the surety within ten (10) working days. All surety protection under this section is to inure to the benefit of the state of Indiana to assure the payment of all premium taxes.

(b) In addition to all other charges, fees, and taxes that may be imposed by law, every surplus lines insurance agent so licensed under this section shall, on or before February 1 and August 1 of each year, collect from the insured and remit to the department for the use and benefit of the state of Indiana an amount equal to two and one-half percent (2 ½%) of all gross premiums upon all policies and contracts of any kind or kinds procured by such agent or broker under the provisions of this section during the preceding six (6) months period ending December 31 and June 30, respectively. The declarations page of these policies must indicate as separate amounts all charges for taxes, fees, and premiums.

(c) Each surplus lines insurance agent so licensed shall execute and file with the department on or before the twentieth day of each month an affidavit setting forth all transactions and policies and contracts procured during the preceding calendar month, setting forth in said affidavit specifically:

- (1) The description and location of the insured property or risk and the name of the insured;
- (2) The gross premiums charged in the policy or contract;
- (3) The name and home office address of the insurer whose policy or contract is issued and the kind or kinds of insurance effected; and
- (4) A statement that said licensee after diligent effort was unable to procure from any authorized insurer or insurers authorized to transact the particular class of insurance business in Indiana the full amount of insurance required to protect the insured, and that such insurance as may be placed under the provisions of this chapter is not placed for the purpose of procuring it at a premium rate lower than would be accepted by any insurer authorized and licensed to transact such insurance business in Indiana.

(d) Each surplus lines insurance agent so licensed shall file with the department, not later than March 31 of each year, the financial statement of each such unauthorized insurer, dated as of December 31, of the preceding year. The insurance commissioner may in his discretion, after reviewing the financial statement of the unauthorized insurer so filed, order agents or brokers licensed under this section to cancel any and all such unauthorized insurer's policies and contracts, if the commissioner is of the opinion that the financial statement or condition of such insurer does not warrant continuance of the risk.

(e) Each surplus lines insurance agent so licensed shall keep a separate account of all business transacted under this section, which shall be open at all times to the inspection of the commissioner, his deputies and examiners.

(f) Every insurer with which risks may be placed under this section shall, by the issuance of such policy or contract, be deemed to have appointed the insurance commissioner, and his successor or successors, as its attorney upon whom process can be served in Indiana in any suit, action or proceeding based upon or arising out of any such policies or contracts.

(g) The surplus lines insurance agent's license provided for in this section may be revoked or renewal thereof refused for failure to pay the tax or to file the affidavit or financial statements as required by this section, or if the licensee places a policy or contract with unauthorized insurers without diligent effort having been made to place such policy or contract with companies authorized to do business in Indiana, or if the licensee places policies or contracts with an unauthorized insurer who has filed with the commissioner a written refusal to accept the commissioner as its attorney upon whom service of process can be served in any suit, action, or proceeding based upon or arising out of any such transactions.

(h) A surplus lines insurance agent licensed under this section may accept and place policies or contracts authorized by this section for any insurance agent duly licensed in this state and may compensate such agent without such agent's being licensed under this section.

(i) If any amount due to the department from any surplus lines insurance agent is not remitted within the time prescribed in subsection (b), the commissioner shall assess the agent a penalty of ten percent (10%) of the amount due. The commissioner shall assess a further penalty of an

additional one percent (1%) of the amount due for each month or portion of a month that any amount due remains unpaid after the first month. Penalties assessed under this subsection are payable by the surplus lines insurance agent and are not collectible from an insured. [IC 27-1-15.5-5, as added by Acts 1977, P.L. 280, § 2; P.L.270-1987, § 1.]

27-1-15.5-6. Exemption from examination. — The following shall be exempt from the requirement for a written examination:

(1) Any applicant for a license covering the same line or lines of insurance for which the applicant was licensed under a like license in this state, other than a temporary license, within the twenty-four (24) months next preceding the date of application, unless such previous license was revoked or suspended, or continuation thereof was refused by the commissioner.

(2) An applicant who:

(A) Has been licensed under a like license in another state within twelve (12) months prior to his application for a license in Indiana; and

(B) Files with the commissioner the certificate of the public official having supervision of insurance in such other state as to the applicant's license and good standing in such state;

shall be required to take only that portion of the examination pertaining to rules and state laws for that license. A facsimile signature and seal of the certifying public official will be deemed sufficient.

(3) An applicant for license to write Class 1 insurance who has attained the designation of chartered life [underwriter,] certified financial planner, and chartered financial consultant shall only be required to take that portion of the examination pertaining to rules and state laws.

(4) An applicant for license to write Class 2 or Class 3 insurance who has attained the designation of chartered property and casualty underwriter, certified insurance counselor, and accredited advisor in insurance shall only be required to take that portion of the examination pertaining to rules and state law. [IC 27-1-15.5-6, as added by Acts 1977, P.L. 280, § 2; P.L.269-1987, § 2; P.L.116-1994, § 32; P.L.130-1994, § 22.]

Compiler's Notes. The bracketed word "underwriter" was substituted for "underwriters" by the compiler in subdivision (3).

27-1-15.5-7. Consultants. — (a) No individual or corporation shall engage in the business of an insurance consultant until a license therefor has been issued to him or it by the commissioner. However, no consultant license is required for the following:

(1) Attorneys licensed to practice law in Indiana acting in their professional capacity.

(2) A duly licensed insurance agent, or surplus lines insurance agent.

(3) A trust officer of a bank acting in the normal course of his employment.

(4) An actuary or a certified public accountant who provides information, recommendations, advice, or services in his professional capacity.

(b) An application for a license to act as an insurance consultant shall be made to the commissioner on forms prescribed by the commissioner. An applicant may limit the scope of his consulting services by so stating on his application. Areas of allowable consulting services shall be:

(1) Class I, consulting regarding the kinds of insurance specified in IC 27-1-5-1 as Class I; and

(2) Class II and Class III, consulting regarding the kinds of insurance specified in IC 27-1-5-1 as Class II and Class III.

Within a reasonable time after receipt of a properly completed application form, the commissioner shall hold a written examination for the applicant limited to the type of consulting services designated by the applicant, and may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations and any other matter which he deems necessary or advisable to determine compliance with this chapter or for the protection of the public.

(c) Consultants shall provide their services as outlined in a written agreement, the form of which shall be approved by the commissioner. The agreement shall be signed by and a copy provided to the person receiving services before any services are performed. The agreement must outline the nature of the work to be performed by the consultant, the method of compensation of the consultant and shall be retained by the consultant for not less than two (2) years after completion of the services. A copy of the agreement shall be available to the commissioner. In the absence of an agreement on the consultant's fee, the consultant shall not be entitled to recover a fee in any action at law or in equity.

(d) No individual or corporation may concurrently hold a consultant's license and an insurance agent's, surplus lines insurance agent's, or limited insurance representative's license at any time.

(e) No licensed consultant may employ, be employed by, or be in partnership with, nor receive any remuneration whatsoever, from any licensed insurance agent, surplus lines insurance agent, or limited insurance representative, or insurer, except that a consultant may be compensated by an insurer for providing consulting services to the insurer.

(f) Such license shall be valid for not longer than twenty-four (24) months and may be renewed and extended in the same manner as an insurance agent's license. The commissioner shall designate on the license those consulting services which the licensee is entitled to perform.

(g) All requirements and standards relating to the denial, revocation or suspension of an insurance agent's license, including penalties, shall apply to the denial, revocation and suspension of an insurance consultant's license as nearly as practicable.

(h) A consultant is obligated under his license to serve with objectivity and complete loyalty solely the insurance interests of his client and to render his client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests. [IC 27-1-15.5-7, as added by Acts 1977, P.L. 280, § 2; 1978, P.L. 130, § 1; P.L.185-1996, § 6.]

27-1-15.5-7.1. Renewal of license. — (a) This section does not apply to:

- (1) a nonresident licensee that:
 - (A) is licensed as a resident insurance agent by another state that has a continuing education requirement as a condition for license renewals; and
 - (B) meets all the requirements for licensure in the resident state of the nonresident licensee; or
 - (2) a person who is issued a limited insurance representative's license without examination under section 3(a)(1) or 3(a)(2) [IC 27-1-15.5-3(a)(1) or IC 27-1-15.5-3(a)(2)] of this chapter.
- (b) To renew a license issued under this chapter:
- (1) an insurance agent (as defined in section 2(b) [IC 27-1-15.5-2(b)] of this chapter) must complete at least thirty (30) hours of credit in continuing education courses; and
 - (2) a limited insurance representative (as defined in section 2(e) [IC 27-1-15.5-2(e)] of this chapter) must complete at least ten (10) hours of credit in continuing education.

An attorney in good standing who is admitted to the practice of law in Indiana and holds a license issued under this chapter may complete all or any number of hours of continuing education required by this subsection by completing an equivalent number of hours in continuing legal education courses that are related to the business of insurance.

(c) To satisfy the requirements of subsection (b), a licensee may use only those credit hours earned in continuing education courses completed by the licensee:

- (1) after the date on which the licensee last renewed a license under this chapter; or
 - (2) if the licensee is renewing a license for the first time, after the date on which the licensee was issued the license under this chapter.
- (d) If an insurance agent (as defined in section 2(b) of this chapter) holds more than one (1) license under this chapter, the licensee may not be required to complete a total of more than thirty (30) hours of credit in continuing education courses to renew all of the licenses.

(e) A licensee may receive credit only for completing continuing education courses that have been approved by the commissioner under section 7.3 [IC 27-1-15.5-7.3] of this chapter.

(f) A licensee who teaches a course approved by the commissioner under section 7.3 of this chapter may receive continuing education credit for teaching the course.

(g) When a licensee renews a license issued under this chapter, the licensee must submit:

- (1) a continuing education statement that:
 - (A) is on a form provided by the commissioner;
 - (B) is signed by the licensee under oath; and
 - (C) lists the continuing education courses completed by the licensee to satisfy the continuing education requirements under this section; and
- (2) any other information required by the commissioner.

(h) A continuing education statement submitted under subsection (g) may be reviewed and audited by the department of insurance.

(i) A licensee shall retain a copy of the original certificate of completion received by the licensee for completion of a continuing education course.

(j) The commissioner may adopt rules under IC 4-22-2 to implement this section. [P.L.148-1990, § 1; P.L.223-1993, § 4; P.L.1-1994, § 132; P.L.185-1996, § 7; P.L.2-1997, § 65; P.L.187-1997, § 1; P.L.268-1999, § 4.]

Effective Dates. P.L.185-1996, § 98, declared an emergency and § 7 provided that the amendment take effect January 1, 1998.
P.L.2-1997, § 98, declared an emergency

and § 65 provided that the amendment take effect January 1, 1998.
P.L.187-1997, § 1. January 1, 1998.

27-1-15.5-7.3. Approval of continuing education courses. — (a) The commissioner shall approve and disapprove continuing education courses after considering recommendations made by the insurance agent education and continuing education advisory council under section 20(h) [IC 27-1-15.5-20(h)] of this chapter.

(b) The commissioner may not approve a course under this section that:

- (1) Is designed to prepare an individual to receive an initial license under this chapter;
- (2) Deals only with office skills;
- (3) Concerns sales promotion and sales techniques;
- (4) Deals with motivation, psychology, or time management; or
- (5) May be completed by a licensee without any supervision by an instructor unless the course involves an examination process:
 - (A) Completed and passed by the licensee as determined by the provider of the course; and
 - (B) Approved by the commissioner.

(c) The commissioner shall adopt rules under IC 4-22-2 to establish procedures for approving continuing education courses. [P.L.148-1990, § 2.]

27-1-15.5-7.5. Extension for complying with continuing education requirement. — (a) The commissioner may grant an extension for complying with the continuing education requirement under section 7.1 [IC 27-1-15.5-7.1] of this chapter.

(b) To receive an extension under this section, a licensee must file a request with the commissioner on a form provided by the commissioner.

(c) After a licensee files a request for an extension, the license of the licensee remains in effect until the commissioner makes a decision on the request.

(d) If the commissioner denies a licensee's request for an extension, the licensee must complete continuing education requirements under section 7.1 of this chapter within ninety (90) days after the commissioner notifies the licensee of the denial. [P.L.148-1990, § 3.]

27-1-15.5-7.7. Biennial license fee. — (a) The commissioner shall adopt rules under IC 4-22-2 to establish a biennial license fee from each licensee required to meet the requirements of section 7.1 [IC 27-1-15.5-7.1] of this chapter.

(b) The commissioner shall adopt rules under IC 4-22-2 to establish appropriate fees from licensees and providers of continuing education courses for the administration of the information required under sections 4 and 7.1 [IC 27-1-15.5-4 and IC 27-1-15.5-7.1] of this chapter. The fees collected under this subsection must produce sufficient revenue to pay the expenses incurred by the department of insurance in implementing this chapter and shall be deposited in the department of insurance fund established by IC 27-1-3-28. [P.L.148-1990, § 4; P.L.116-1994, § 33; P.L.130-1994, § 23.]

27-1-15.5-8. License denial, nonrenewal, or termination — Disciplinary sanctions. — (a) The commissioner may suspend, revoke, refuse to continue, renew, or issue any license issued under this chapter, or impose any of the disciplinary sanctions under subsection (f) if, after notice to the licensee and to the insurer represented and a hearing, the commissioner finds as to the licensee any one (1) or more of the following conditions:

- (1) Any materially untrue statement in the license application.
- (2) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner at the time of issuance.
- (3) Violation of or noncompliance with any insurance laws, violation of any provision of IC 28 concerning the sale of a life insurance policy or an annuity contract, or violation of any lawful rule, regulation, or order of the commissioner or of a commissioner of another state.
- (4) Obtaining or attempting to obtain any such license through misrepresentation or fraud.
- (5) Improperly withholding, misappropriating, or converting to the licensee's own use any money belonging to policyholders, insurers, beneficiaries, or others received in the course of the licensee's insurance business.
- (6) Misrepresentation of the terms of any actual or proposed insurance contract.
- (7) A:
 - (A) conviction of; or
 - (B) plea of guilty, no contest, or nolo contendere to; a felony or misdemeanor involving moral turpitude.
- (8) The licensee has been found guilty of any unfair trade practice or of fraud.
- (9) In the conduct of the licensee's affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown himself to be incompetent, untrustworthy, or financially irresponsible, or not performing in the best interests of the insuring public.
- (10) The licensee's license has been suspended or revoked in any state, province, district, or territory.
- (11) The licensee has forged another's name to an application for insurance.
- (12) An applicant has been found to have been cheating on an examination for an insurance license.

(13) The applicant or licensee is on the most recent tax warrant list supplied to the commissioner by the department of state revenue.

(14) The licensee has failed to satisfy the continuing education requirements under section 7.1 [IC 27-1-15.5-7.1] of this chapter.

(15) The licensee has violated section 24 [IC 27-1-15.5-24] of this chapter.

(b) The commissioner shall refuse to:

(1) issue a license; or

(2) renew a license issued;

under this chapter to any person who is the subject of an order issued by a court under IC 31-14-12-7 or IC 31-16-12-10 (or IC 31-1-11.5-13(m) or IC 31-6-6.1-16(m) before their repeal).

(c) In the event that the action by the commissioner is to not renew or to deny an application for a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reasons for the denial or nonrenewal of the applicant's or licensee's license. Not later than sixty (60) days after receiving a notice from the commissioner under this subsection, the applicant or licensee may make written demand upon the commissioner for a hearing to determine the reasonableness of the commissioner's action. Such hearing shall be held within thirty (30) days from the date of receipt of the written demand of the applicant.

(d) The license of a corporation may be suspended, revoked, or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one (1) or more of the officers or managers acting on behalf of the corporation and such violation was not reported to the insurance department nor corrective action taken in relation to the violation.

(e) In addition to or in lieu of any applicable denial, suspension, or revocation of a license, any person violating this chapter may, after hearing, be subject to a civil penalty of not less than fifty dollars (\$50) nor more than ten thousand dollars (\$10,000). Such a penalty may be enforced in the same manner as civil judgments.

(f) The commissioner may impose any of the following sanctions, singly or in combination, when the commissioner finds that a licensee is guilty of any offense under subsection (a):

(1) Permanently revoke (as defined in subsection (i)) a licensee's certificate.

(2) Revoke a licensee's certificate with a stipulation that the licensee may not reapply for a certificate for a period fixed by the commissioner. The fixed period may not exceed ten (10) years.

(3) Suspend a licensee's certificate.

(4) Censure a licensee.

(5) Issue a letter of reprimand.

(6) Place a licensee on probation status and require the licensee to:

(A) report regularly to the commissioner upon the matters that are the basis of probation;

(B) limit practice to those areas prescribed by the commissioner; or

(C) continue or renew professional education under a licensee approved by the commissioner until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

The commissioner may withdraw the probation if the commissioner finds that the deficiency that required disciplinary action has been remedied.

(g) The commissioner may order the licensee to make restitution if the commissioner finds that the licensee has violated:

- (1) subsection (a)(5);
- (2) subsection (a)(8);
- (3) subsection (a)(9); or
- (4) section 24 of this chapter.

(h) The insurance commissioner shall notify the securities commissioner when an administrative action or civil proceeding is filed under this section and when an order is issued under this section denying, suspending, or revoking a license.

(i) For purposes of subsection (f), "permanently revoke" means that the licensee's certificate shall never be reinstated and the licensee shall not be eligible to submit an application for a certificate to the department. [IC 27-1-15.5-8, as added by Acts 1977, P.L. 280, § 2; P.L.6-1987, § 20; P.L.271-1987, § 1; P.L.31-1988, § 13; P.L.148-1990, § 5; P.L.116-1994, § 34; P.L.130-1994, § 24; P.L.23-1996, § 22; P.L.185-1996, § 8; P.L.1-1997, § 111; P.L.188-1997, § 1; P.L.253-1997(ss), § 27; P.L.82-1998, § 3; P.L.91-1998, § 6; P.L.1-1999, § 58; P.L.268-1999, § 5.]

Compiler's Notes. This section was separately amended by P.L.1-1999 and by P.L.268-1999, neither act referring to the other. Because the sections were identical, this section is set out only once.

Cross References. Acting for unlicensed companies, IC 27-8-3-24.

Conviction of felony or misdemeanor, effect on license or certificate holder, IC 25-1-1.1-1.

Participation in illegal business by company, misdemeanor, IC 27-8-1-17.

Renewal of permit after revocation, IC 27-1-6-17.

Revocation of authority, IC 27-1-6-17.

Suspension of license for limited or restricted representation, IC 27-4-3.

Cited: *Weppler v. Stansbury*, 694 N.E.2d 1173 (Ind. App. 1998).

NOTES TO DECISIONS

ANALYSIS

Conduct of affairs under license.
Crimes involving moral turpitude.
—Theft.
Injunctions.

Conduct of Affairs Under License.

The phrase "in the conduct of his [the licensee's] affairs under the license" as used in subsection (a)(9) provides understandable criteria by which the licensee may gauge his behavior. *Clarkson v. Department of Ins.*, 425 N.E.2d 203 (Ind. App. 1981).

Crimes Involving Moral Turpitude.

—Theft.

Theft is a felony involving moral turpitude

as a matter of law and not fact. *Clarkson v. Department of Ins.*, 425 N.E.2d 203 (Ind. App. 1981).

Commissioner of insurance was empowered to revoke an insurance agent's license under subsection (a)(7) upon finding that the insurance agent committed the felony offense of theft. *Clarkson v. Department of Ins.*, 425 N.E.2d 203 (Ind. App. 1981).

Injunctions.

Injunction will lie to require the insurance commissioner to grant a license to an individual applicant who is refused a license to write automobile insurance by the commissioner on sole grounds that such applicant is engaged in the retail automobile business. *Department of Ins. v. MIC*, 236 Ind. 1, 138 N.E.2d 157 (1956).

27-1-15.5-9. Hearings. — All hearings held pursuant to this chapter shall be governed by IC 4-21.5-3. The commissioner may appoint members of his staff to act as hearing officers for hearings held pursuant to this chapter. [IC 27-1-15.5-9, as added by Acts 1977, P.L. 280, § 2; P.L.7-1987, § 137.]

27-1-15.5-10. Surrender of license — Loss or destruction of license. — (a) The commissioner shall promptly notify all appointing insurers, where applicable, and the licensee regarding any suspension, revocation, or termination of license by the commissioner.

(b) Upon suspension, revocation, or termination of the license of a resident of Indiana, the commissioner shall notify the central office of the National Association of Insurance Commissioners and the insurance commissioner of each state for whom he has executed a certificate as provided for in section 4 [IC 27-1-15.5-4] of this chapter.

(c) Upon suspension, revocation, or termination of a license, the licensee shall forthwith deliver it to the commissioner by personal delivery or by mail.

(d) Any licensee who ceases to maintain his residency in Indiana (as defined in section 4 of this chapter) shall deliver his insurance license to the commissioner by personal delivery or by mail within thirty (30) days after terminating said residency.

(e) The commissioner may issue a duplicate license for any lost, stolen, or destroyed license issued pursuant to this chapter upon affidavit of the licensee prescribed by the commissioner concerning the facts of such loss, theft, or destruction. The fee charged by the commissioner for the issuance of a duplicate:

- (1) Insurance agent license;
- (2) Surplus lines insurance agent license;
- (3) Limited insurance representative license; or
- (4) Consultant license;

may not exceed ten dollars (\$10). [IC 27-1-15.5-10, as added by Acts 1977, P.L. 280, § 2; P.L.235-1995, § 12.]

Collateral References. 43 Am. Jur. 2d
Insurance § 34.

27-1-15.5-11. [Repealed.]

Compiler's Notes. This section, concerning appointment and termination reports, was repealed by Acts 1981, P.L. 243, § 2. For

present similar provisions, see IC 27-1-15.5-11.1.

27-1-15.5-11.1. Reports to commissioner. — (a) Each insurer or group of affiliated insurers authorized to transact business within Indiana shall report to the commissioner annually on January 1, the names of all corporate or individual agents with whom the insurer or group of affiliated insurers has contracted for representation within Indiana. The annual report shall be accompanied by a fee of two dollars and fifty cents (\$2.50) for each corporate or individual agent.

(b) Each insurer which has appointed a licensed insurance agent or limited insurance representative to solicit or negotiate insurance on its behalf shall notify the commissioner of a termination of that appointment if that termination is for any of the causes listed under section 8 [IC 27-1-15.5-8] of this chapter. Any information, document, record, or statement provided under this section may be used by the commissioner in any action taken under section 8 of this chapter. However, the information shall be considered privileged between the reporting insurer and the commissioner or his representative.

(c) An insurer (or a person acting on its behalf) who releases or provides evidence or information under this section shall be immune from any civil or criminal liability for providing such evidence or information.

(d) Each licensed insurance agent or limited insurance representative shall, within ten (10) days of signing for receipt of a registered letter from the commissioner, furnish the commissioner with a full and complete report listing each insurer with which the licensee has held an appointment during the year preceding the request.

(e) In the event that a licensee fails to comply within ten (10) days after receipt of a request from the commissioner made under subsection (d), the commissioner may, in his sole discretion, without hearing, and in addition to any other sanctions allowed by law, suspend any insurance licenses held by that licensee pending receipt of the appointment report. [IC 27-1-15.5-11.1, as added by Acts 1981, P.L. 243, § 1; P.L.271-1987, § 2.]

27-1-15.5-12. Representatives of fraternal benefit societies. — Persons representing fraternal benefit societies who solicit and negotiate insurance contracts shall be deemed insurance agents and subject to the same licensing requirements as insurance agents, Provided That:

- (1) Any officer, employee or secretary of any such society, or of any subordinate lodge or branch thereof who devotes substantially all of his time to activities other than the solicitation or negotiation of insurance contracts and who receives no commission or other compensation directly dependent upon the number or amount of contracts solicited or negotiated shall not be required to have an insurance agent's license; or
- (2) An individual then performing the functions of a person representing a fraternal benefit society before July 1, 1977, is not required to take an examination, but is entitled to have a license issued to him, subject to section 3(f) [IC 27-1-15.5-3(f)] of this chapter. [IC 27-1-15.5-12, as added by Acts 1977, P.L. 280, § 2.]

27-1-15.5-13. Limited insurance representatives listing before July 1, 1977. — A person who performed the functions of a limited insurance representative negotiating or soliciting Class II(j) insurance before July 1, 1977, is not required to take an examination, but is entitled to have a license issued to him, subject to section 3(f) [IC 27-1-15.5-3(f)] of this chapter. [IC 27-1-15.5-13, as added by Acts 1977, P.L. 280, § 2.]

27-1-15.5-14. [Repealed.]

Compiler's Notes. This section, concerning countersigning of policies by resident agents, was repealed by P.L.255-1985, § 1.

27-1-15.5-15. Temporary licensing. — (a) The commissioner may issue a temporary license as an insurance agent for an initial period not to exceed ninety (90) days and additional periods of ninety (90) days for good cause shown without requiring an examination if the commissioner deems that such temporary license is necessary for the servicing of an insurance business in the following cases:

- (1) To the surviving spouse or next of kin, or to the administrator or executor or employee thereof, of a licensed insurance agent, deceased, or to the spouse, next of kin, employee, or legal guardian of a licensed insurance agent who becomes disabled.
- (2) To the designee of a licensed insurance agent entering upon active service in the armed forces of the United States of America.
- (3) In any other circumstances where the commissioner deems that the public interest will best be served by the issuance of such license. [IC 27-1-15.5-15, as added by Acts 1977, P.L. 280, § 2.]

Compiler's Notes. As enacted by Acts 1977, P.L. 280, § 2, this section contains a subsection (a) but no subsection (b).

27-1-15.5-16. Rules and regulations. — The commissioner of insurance may adopt reasonable rules and regulations for the implementation and administration of the provisions of this chapter. [IC 27-1-15.5-16, as added by Acts 1977, P.L. 280, § 2.]

27-1-15.5-17. Exemptions. — Exemptions. This chapter does not apply to:

- (1) representatives of county farmers mutual insurance companies; or
- (2) officers, employees, or representatives of a rental company (as defined in IC 24-4-9-7) who negotiate or solicit insurance incidental to and in connection with the rental of a motor vehicle. [IC 27-1-15.5-17, as added by Acts 1977, P.L. 280, § 2; P.L.263-1999, § 1.]

27-1-15.5-18. Solicitors. — Any persons holding a valid solicitor's license on July 1, 1977, shall be subject to the same rights and responsibilities under a solicitor's license as were in effect prior to enactment of this chapter. [IC 27-1-15.5-18, as added by Acts 1977, P.L. 280, § 2.]

27-1-15.5-19. Programs of study [effective until January 1, 2000]. — (a) To qualify as a registered insurance agent program of study required under section 4(e) [IC 27-1-15.5-4(e)] of this chapter, the program of study must meet all of the following criteria:

- (1) Be conducted by:
 - (A) An insurance trade association;
 - (B) An accredited college or university;

- (C) An educational organization certified by the insurance agent education advisory council; or
 - (D) An insurance company licensed to do business in Indiana.
- (2) Provide for instruction provided by an approved instructor in a structured setting as follows:
- (A) For life insurance agents, a minimum of twenty-four (24) hours of instruction on:
 - (i) Ethical practices in the marketing and selling of insurance;
 - (ii) Requirements of the insurance laws and administrative rules of the state; and
 - (iii) Principles of life insurance.
 - (B) For health insurance agents, a minimum of twenty-four (24) hours of instruction on:
 - (i) Ethical practices in the marketing and selling of insurance;
 - (ii) Requirements of the insurance laws and administrative rules of the state; and
 - (iii) Principles of health insurance.
 - (C) For life and health insurance agents, a minimum of forty (40) hours of instruction on:
 - (i) Ethical practices in the marketing and selling of insurance;
 - (ii) Requirements of the insurance laws and administrative rules of the state;
 - (iii) Principles of life insurance; and
 - (iv) Principles of health insurance.
 - (D) For property and casualty insurance agents, a minimum of forty (40) hours of instruction on:
 - (i) Ethical practices in the marketing and selling of insurance;
 - (ii) Requirements of the insurance laws and administrative rules of the state;
 - (iii) Principles of property insurance; and
 - (iv) Principles of liability insurance.
- (3) Be given only by individuals who meet the qualifications required by the commissioner. The commissioner, after consulting with the insurance agent education advisory council, shall adopt rules prescribing the criteria to be met by a person in order to render instruction in a registered insurance agent program of study.
- (b) The commissioner shall adopt rules under IC 4-22-2 prescribing the subject matter that a program of study must possess to qualify for registration under this section.
- (c) The commissioner may make recommendations for improvements in course materials as considered necessary by the commissioner.
- (d) The commissioner shall certify a program of study meeting the requirements of this section as a registered insurance agent program of study.
- (e) The commissioner may, after notice and opportunity for a hearing, withdraw the registration of a program of study which does not maintain reasonable standards as determined by the commissioner for the protection of the public.

(f) Programs of study certified under this section must submit current course materials to the commissioner upon request but no less frequently than every three (3) years. [P.L.269-1987, § 3.]

27-1-15.5-19. Programs of study [effective January 1, 2000]. —

(a) To qualify as a registered insurance agent program of study required under section 4(e) [IC 27-1-15.5-4(e)] of this chapter, the program of study must meet all of the following criteria:

(1) Be conducted or developed by:

- (A) an insurance trade association;
- (B) an accredited college or university;
- (C) an educational organization certified by the insurance agent education advisory council; or
- (D) an insurance company licensed to do business in Indiana.

(2) Provide for self-study or instruction provided by an approved instructor in a structured setting as follows:

(A) For life insurance agents, a minimum of twenty-four (24) hours of instruction in a structured setting or comparable self-study on:

- (i) ethical practices in the marketing and selling of insurance;
- (ii) requirements of the insurance laws and administrative rules of the state; and
- (iii) principles of life insurance.

(B) For health insurance agents, a minimum of twenty-four (24) hours of instruction in a structured setting or comparable self-study on:

- (i) ethical practices in the marketing and selling of insurance;
- (ii) requirements of the insurance laws and administrative rules of the state; and
- (iii) principles of health insurance.

(C) For life and health insurance agents, a minimum of forty (40) hours of instruction in a structured setting or comparable self-study on:

- (i) ethical practices in the marketing and selling of insurance;
- (ii) requirements of the insurance laws and administrative rules of the state;
- (iii) principles of life insurance; and
- (iv) principles of health insurance.

(D) For property and casualty insurance agents, a minimum of forty (40) hours of instruction in a structured setting or comparable self-study on:

- (i) ethical practices in the marketing and selling of insurance;
- (ii) requirements of the insurance laws and administrative rules of the state;
- (iii) principles of property insurance; and
- (iv) principles of liability insurance.

(3) Instruction provided in a structured setting must be given only by individuals who meet the qualifications required by the commissioner. The commissioner, after consulting with the insurance agent education

advisory council, shall adopt rules prescribing the criteria to be met by a person in order to render instruction in a registered insurance agent program of study.

(b) The commissioner shall adopt rules under IC 4-22-2 prescribing the subject matter that a program of study must possess to qualify for registration under this section.

(c) The commissioner may make recommendations for improvements in course materials as considered necessary by the commissioner.

(d) The commissioner shall certify a program of study meeting the requirements of this section as a registered insurance agent program of study.

(e) The commissioner may, after notice and opportunity for a hearing, withdraw the registration of a program of study which does not maintain reasonable standards as determined by the commissioner for the protection of the public.

(f) Programs of study certified under this section must submit current course materials to the commissioner upon request but no less frequently than every three (3) years. [P.L.269-1987, § 3; P.L.233-1999, § 5.]

Amendments. The 1999 amendment, effective January 1, 2000, inserted "or developed" in subsection (a)(1); inserted "self-study or" in the introductory language of subsection (a)(2); inserted "in a structured setting or comparable self-study" in subsections

(a)(2)(A) through (a)(2)(D); and inserted "Instruction provided in a structured setting must" in subsection (a)(3).

Effective Dates. P.L.233-1999, § 19, declared an emergency and § 5 provided that the amendment take effect January 1, 2000.

27-1-15.5-20. Insurance agent education and continuing education advisory council. — (a) The insurance agent education and continuing education advisory council is created within the department of insurance. The council consists of the commissioner and twelve (12) members appointed by the governor as follows:

- (1) Two (2) members recommended by the Professional Insurance Agents of Indiana.
- (2) Two (2) members recommended by the Independent Insurance Agents of Indiana.
- (3) Two (2) members recommended by the Indiana State Association of Life Underwriters, Incorporated.
- (4) Two (2) representatives of direct writing or exclusive agent's insurance companies.
- (5) One (1) representative of the Association of Life Insurance Companies.
- (6) One (1) member recommended by the Insurance Institute of Indiana.
- (7) Two (2) other individuals.

(b) Members of the council shall serve for a term of three (3) years. Members may not serve more than two (2) consecutive terms.

(c) Before making appointments to the council, the governor must:

- (1) Solicit; and
- (2) Select appointments to the council from;

nominations made by organizations and associations that represent individuals and corporations selling insurance in Indiana.

(d) The council shall meet at least semiannually.

(e) A member of the council is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). A member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(f) The council shall review and make recommendations to the commissioner with respect to course materials, the curriculum, and the credentials of the instructors of each program of study registered with the commissioner under section 19 [IC 27-1-15.5-19] of this chapter and shall make recommendations to the commissioner with respect to educational requirements for insurance agents.

(g) Any member of the council or designee of the commissioner shall be permitted access to any classroom while instruction is in progress to monitor the classroom instruction.

(h) The council shall make recommendations to the commissioner concerning the following:

(1) Continuing education courses approved by the commissioner under section 7.3 [IC 27-1-15.5-7.3] of this chapter.

(2) Rules adopted by the commissioner affecting continuing education. [P.L.269-1987, § 4; P.L.148-1990, § 6.]

27-1-15.5-21. Suspension of license — Notice — Reinstatement. —

(a) Upon receiving an order of a court issued under IC 31-14-12-7 or IC 31-16-12-10 (or IC 31-1-11.5-13(m) or IC 31-6-6.1-16(m) before their repeal), the commissioner shall:

(1) suspend a license issued under this chapter to the person who is the subject of the order; and

(2) promptly mail a notice to the last known address of the person who is the subject of the order, stating the following:

(A) That the person's license is suspended beginning five (5) business days after the date the notice is mailed, and that the suspension will terminate not earlier than ten (10) business days after the commissioner receives an order allowing reinstatement from the court that issued the suspension order.

(B) That the person has the right to petition for reinstatement of a license issued under this chapter to the court that issued the order for suspension.

(b) The commissioner shall not reinstate a license suspended under subsection (a) until the commissioner receives an order allowing reinstatement from the court that issued the order for suspension. [P.L.23-1996, § 23; P.L.1-1997, § 112.]

27-1-15.5-22. Notice of orders from bureau — Contents — Suspension of license — Reinstatement. — (a) Upon receiving an order from the bureau (Title IV-D agency) under IC 12-17-2-34(i), the commissioner

shall send to the person who is the subject of the order a notice that does the following:

- (1) States that the person is delinquent and is subject to an order placing the person on probationary status.
- (2) Explains that unless the person contacts the bureau and:
 - (A) pays the person's child support arrearage in full;
 - (B) requests the activation of an income withholding order under IC 31-16-15-2 and establishes a payment plan with the bureau to pay the arrearage; or
 - (C) requests a hearing under IC 12-17-2-35;

within twenty (20) days after the date the notice is mailed, the commissioner shall place the person on probationary status with respect to a license issued to the person under this chapter.

- (3) Explains that the person may contest the bureau's determination that the person is delinquent and subject to an order placing the person on probationary status by making written application to the bureau within twenty (20) days after the date the notice is mailed.
- (4) Explains that the only basis for contesting the bureau's determination that the person is delinquent and subject to an order placing the person on probationary status is a mistake of fact.

- (5) Explains the procedures to:

- (A) pay the person's child support arrearage in full;
- (B) establish a payment plan with the bureau to pay the arrearage;
- (C) request the activation of an income withholding order under IC 31-16-15-2; and
- (D) request a hearing under IC 12-17-2-35.

- (6) Explains that the probation will terminate ten (10) business days after the commissioner receives a notice from the bureau that the person has:

- (A) paid the person's child support arrearage in full; or
- (B) established a payment plan with the bureau to pay the arrearage and requested the activation of an income withholding order under IC 31-16-15-2.

(b) Upon receiving an order from the bureau (Title IV-D agency) under IC 12-17-2-36(d), the commissioner shall send a notice to the person who is the subject of the order stating the following:

- (1) That a license issued to the person under this chapter has been placed on probationary status, beginning five (5) business days after the date the notice was mailed, and that the probation will terminate ten (10) business days after the commissioner receives a notice from the bureau that the person has:

- (A) paid the person's child support arrearage in full; or
- (B) established a payment plan with the bureau to pay the arrearage and requested the activation of an income withholding order under IC 31-16-15-2.

- (2) That if the commissioner is advised by the bureau that the person whose license has been placed on probationary status has failed to:

- (A) pay the person's child support arrearage in full; or

(B) establish a payment plan with the bureau to pay the arrearage and request the activation of an income withholding order under IC 31-16-15-2;

within twenty (20) days after the date the notice is mailed, the commissioner shall suspend the person's license.

(c) If the commissioner receives a notice by the bureau (Title IV-D agency) under IC 12-17-2-34(i) that the person whose license has been placed on probationary status has failed to:

(1) pay the person's child support arrearage in full; or

(2) establish a payment plan with the bureau to pay the arrearage and request the activation of an income withholding order under IC 31-16-15-2;

within twenty (20) days after the notice required under subsection (b) is mailed, the commissioner shall suspend the person's license.

(d) The commissioner may not reinstate any license placed on probation or suspended under this section until the commissioner receives a notice from the bureau that the person has:

(1) paid the person's child support arrearage in full; or

(2) established a payment plan with the bureau to pay the arrearage and requested the activation of an income withholding order under IC 31-16-15-2. [P.L.23-1996, § 24; P.L.1-1997, § 113.]

27-1-15.5-23. Enforcement of provisions concerning sale of life insurance policies and annuities contracts — Powers of commissioner and director of department of financial institutions. — The commissioner and the director of the department of financial institutions shall consult with each other and assist each other in enforcing compliance with the provisions of IC 28 concerning the sale of life insurance policies and annuity contracts. The commissioner and the director of the department of financial institutions may jointly conduct investigations, prosecute suits, and take other official action they consider appropriate under this section if either of them is empowered to take the action. If the director of the department of financial institutions is informed of a violation or suspected violation by a financial institution or its affiliate of any provision of IC 28 concerning the sale of life insurance policies or annuity contracts or of the insurance laws and rules of Indiana, the director of the department of financial institutions shall timely advise the commissioner of the violation. If the commissioner is informed of a violation or suspected violation by a financial institution or its affiliate of any provision of IC 28 concerning the sale of life insurance policies or annuity contracts or of the insurance laws and rules of Indiana, the commissioner shall timely advise the director of the department of financial institutions of the violation. [P.L.188-1997, § 2.]

27-1-15.5-24. Agent must have insurable interest to be beneficiary or owner of life insurance policy or annuity contract. — (a) As used in this section, "annuity contract" means an individual annuity contract.

(b) As used in this section, "life insurance policy" means an insurance policy that:

- (1) provides the type of insurance described in Class 1(a) of IC 27-1-5-1; and
- (2) is written on an individual basis.

(c) At no time may an agent:

- (1) be named a beneficiary of;
- (2) become an owner of; or
- (3) receive a collateral assignment of;

an individual life insurance policy or individual annuity contract unless the agent has an insurable interest in the life of the insured, or annuitant.

(d) A beneficiary designation, ownership designation, or collateral assignment made in violation of this section is void. [P.L.82-1998, § 4.]

CHAPTER 16

INSURANCE LAW — LIFE INSURANCE AGENTS

27-1-16-1 — 27-1-16-8. [Repealed.]

Compiler's Notes. This chapter, concerning life insurance agents, was repealed by

Acts 1977, P.L. 280, § 3. For present similar provisions, see IC 27-1-15.5.

CHAPTER 17

INSURANCE LAW — ADMISSION OF FOREIGN AND ALIEN COMPANIES

SECTION.

- 27-1-17-1. Admission to transact business.
- 27-1-17-2. Powers.
- 27-1-17-3. Corporate name.
- 27-1-17-4. Procedure for admission.
- 27-1-17-5. Financial requirements.

SECTION.

- 27-1-17-6. Deposit of alien companies.
- 27-1-17-7. Trustees of alien companies.
- 27-1-17-8. Issuance of certificate of authority.
- 27-1-17-9. Company in hazardous financial condition.

27-1-17-1. Admission to transact business. — Any foreign or alien insurance company organized for the purpose of transacting any insurance business, not qualified as of March 8, 1935, to transact business in this state, before transacting business in this state shall procure a certificate of authority from the department in the manner provided in this chapter and shall otherwise comply with the provisions and be subject to the regulations set forth in this chapter. [Acts 1935, ch. 162, § 226, p. 588; P.L.252-1985, § 71.]

Cross References. Foreign abstract and title insurance companies, IC 27-7-3-12, IC 27-7-3-15, IC 27-7-3-16.

Foreign company and foreign corporation defined, IC 27-1-2-3.

General provisions concerning foreign and alien companies, IC 27-1-18-1 — IC 27-1-18-6, IC 27-8-1-11, IC 27-8-1-13 — IC 27-8-1-16, IC 27-8-2-1, IC 27-8-2-2, IC 27-8-3-19, IC 27-8-3-20.

Livestock insurance, IC 27-5-9-14, IC 27-5-9-18, IC 27-5-9-19.

Plate glass insurance, regulations, IC 27-4-8-1.

Reorganization under laws of Indiana, IC 27-1-19.

Retaliatory provisions, IC 27-1-20-12.

Subject to Indiana Insurance Law, IC 27-1-2-2.

Subsidiary companies, IC 27-2-9-8, IC 27-3-3-1 — IC 27-3-3-5.

Withdrawal from state, IC 27-1-18-6.

Opinions of Attorney General. New York life insurance company was not "transacting business in this state," even though the insurance covered Indiana employees, since solicitations, contracts, and premium payments were not made in Indiana. 1944, No. 53, p. 217.

Where a foreign stock life insurance com-

pany and noninsurance corporation which owns all the stock of the life insurance company, both domiciled in the same state, merge, there are shareholders in existence and a corporate entity exists in the surviving life insurance company which would legally entitle it to execute and follow procedures necessary to be permitted to do business in Indiana and empower the commissioner of the insurance department to consider such request. 1964, No. 1, p. 1.

NOTES TO DECISIONS

ANALYSIS

In general.

Compliance with general corporation laws.

Doing business in state.

Effect of noncompliance.

In General.

Indiana has the power to determine for itself the conditions upon which foreign insurance companies may be admitted to transact business. *Metropolitan Cas. Ins. Co. v. Brownell*, 68 F.2d 481 (7th Cir. 1934), aff'd, 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935).

The writing of an insurance contract is not a transaction in commerce, nor is the insurance contract an article of commerce, but merely a single contract of indemnity. *Metropolitan Cas. Ins. Co. v. Brownell*, 68 F.2d 481 (7th Cir. 1934), aff'd, 294 U.S. 580, 55 S. Ct. 538, 79 L. Ed. 1070 (1935).

The legislature has power to declare upon what terms foreign insurance companies may do business in this state. *Farmers & Merchants Ins. Co. v. Harrah*, 47 Ind. 236 (1874); *Phenix Ins. Co. v. Burdett*, 112 Ind. 204, 13 N.E. 705 (1887); *State ex rel. Baldwin v. Insurance Co. of N. Am.*, 115 Ind. 257, 17 N.E. 574 (1888); *Maine Guarantee Co. v. Cox*, 146 Ind. 107, 42 N.E. 915 (1896).

All insurance companies not organized under the laws of this state must comply with statute for admission of foreign or alien insurance company to transact business in the state. *Daly v. National Life Ins. Co.*, 64 Ind. 1 (1878); *State v. Briggs*, 116 Ind. 55, 18 N.E. 395 (1888).

When there was a substantial compliance with Acts 1865, 1 R. S. 1876, p. 594, by an insurance company, a failure on the part of the officers of this state to discharge their duties did not affect the rights of the company. *American Ins. Co. v. Butler*, 70 Ind. 1 (1880).

It will be presumed that foreign insurance companies have complied with statute for admission of foreign or alien insurance company to transact business in the state when the contrary is not shown. *Cassaday v. American Ins. Co.*, 72 Ind. 95 (1880).

Provision in ordinance regulating jitneys that indemnity insurance must be obtained from company authorized to do business in Indiana did not contravene equality clause of state constitution nor equal protection clause of federal constitution, since any foreign indemnity insurance company having sufficient assets could qualify. *Sprout v. City of S. Bend*, 198 Ind. 563, 153 N.E. 504, 49 A.L.R. 1198 (1926), rev'd on other grounds, 277 U.S. 163, 48 S. Ct. 502, 72 L. Ed. 833 (1928).

Fact that foreign insurance company is not authorized to do business in this state does not render its contracts for insurance void, but constitutes matter in abatement until it is so authorized. *Farmers Mut. Hail Ins. Co. v. Gorsuch*, 123 Ind. App. 264, 110 N.E.2d 344 (1953).

Compliance with General Corporation Laws.

When foreign insurance companies made contracts in this state not relating to insurance, they were required to comply with the statutes relating to foreign corporations generally, before they could enforce such contracts. *Daly v. National Life Ins. Co.*, 64 Ind. 1 (1878).

Under a prior similar provision, foreign surety companies were not required to comply with the statutes regulating right of foreign corporations generally to transact business in the state, as such surety companies were governed by special statutes. *Barricklow v. Stewart*, 31 Ind. App. 446, 68 N.E. 316 (1903).

Doing Business in State.

Appointing agents and taking bonds therefrom is not transacting the business of insurance. *Wilson v. Ohion Farmers Ins. Co.*, 164 Ind. 462, 73 N.E. 892 (1905); *McCord v. Illinois Nat'l Fire Ins. Co.*, 47 Ind. App. 602, 94 N.E. 1053 (1911).

Foreign insurance companies could execute contracts outside of this state insuring property in this state without a compliance with the laws of this state regulating foreign companies. *Swing v. Hill*, 165 Ind. 411, 75 N.E. 658 (1905).

Doing Business in State. (Cont'd)

The fact that a foreign insurance company had written insurance on property situated in this state did not, of itself, show that such company had transacted insurance business in this state. *Swing v. Hill*, 165 Ind. 411, 75 N.E. 658 (1905).

Issuing policies in this state insuring property therein constituted doing business in this state. *McCord v. Illinois Nat'l Fire Ins. Co.*, 47 Ind. App. 602, 94 N.E. 1053 (1911).

Effect of Noncompliance.

The fact that a foreign insurance company doing business in this state had not complied with statute requiring procurement of a certificate of authority did not render the contract of insurance void, but merely constituted matter in abatement until the company complied with the statute. *Walter A. Wood Mowing & Reaping Mach. Co. v. Caldwell*, 54 Ind. 270, 23 Am. R. 641 (1876); *Behler v. German Mut. Fire Ins. Co.*, 68 Ind. 347 (1879); *American Ins. Co. v. Wellman*, 69 Ind. 413 (1879); *Elston v. Piggott*, 94 Ind. 14 (1884); *Phenix Ins. Co. v. Pennsylvania R.R.*, 134 Ind. 215, 33 N.E. 970, 20 L.R.A. 405 (1893); *North Mercer Natural Gas Co. v. Smith*, 27 Ind. App. 472, 61 N.E. 10 (1901).

Foreign companies could sue to enforce claims not arising out of contracts of insurance without complying with statute requiring foreign insurance companies to procure a certificate of authority to transact business in the state. *Phenix Ins. Co. v. Pennsylvania R.R.*, 134 Ind. 215, 33 N.E. 970, 20 L.R.A. 405 (1893).

If a receiver was appointed for a foreign insurance company before it had obtained a certificate of authority to do business in the state, such receiver could not enforce contracts that were valid because of such non-compliance. *Swing v. Toner*, 178 Ind. 102, 96 N.E. 946 (1912); *Wiestling v. Warthin*, 1 Ind. App. 217, 27 N.E. 576 (1891); *Swing v. Wellington*, 44 Ind. App. 455, 89 N.E. 514 (1909); *Lowenmeyer v. National Lumber Co.*, 71 Ind. App. 458, 125 N.E. 67 (1919).

If a foreign insurance company did not comply with the laws of this state regulating such companies, and such company was in the hands of a trustee, no recovery could be had upon assessments made on members by such company. *Swing v. Wellington*, 44 Ind. App. 455, 89 N.E. 514 (1909).

27-1-17-2. Powers. — No foreign or alien company shall be admitted for the purpose of transacting any kind or kinds of insurance business in this state, the transaction of which by a domestic company is not permitted by the laws of this state; Provided, however, That where a foreign or alien company whose charter provides for the transaction of the kind or kinds of insurance described in more than one (1) class of IC 27-1-5-1 has been transacting business in this state under a certificate of authority issued by the insurance department or insurance commissioner prior to March 8, 1935, such company may be issued a certificate of authority under the provisions of this article to make the kind or kinds of insurance provided by its charter. A foreign or alien insurance company admitted to do an insurance business in this state shall have the same but no greater rights and privileges than a domestic company. [Acts 1935, ch. 162, § 227, p. 588; P.L.252-1985, § 72.]

Opinions of Attorney General. Foreign insurance companies licensed to do business in Indiana prior to 1935 may transact the kinds of insurance provided for in their charters. 1940, p. 66.

A foreign casualty company admitted to do business in Indiana prior to effective date of this section may be authorized to write personal property floater policies where its charter provides for this power. 1943, p. 235.

27-1-17-3. Corporate name. — No foreign or alien insurance company shall be admitted to do business in this state having a name which, at the date of such admission, could not be taken by a domestic corporation under the provisions of IC 27-1-6-3, except that the name of a foreign or alien insurance company need not include the word "company," "corporation," "incorporated," or "mutual," or one (1) of the abbreviations thereof, nor the

word "insurance" or the word "assurance" provided the name of such company is authorized by the laws of the state or territory of its organization or domicile and provided such name does not negate the characteristic of such company as an insurance company. No such foreign or alien insurance company after it has been admitted shall, by amendment to its charter, assume any name which, at the date of the filing of such amendment as provided in this chapter, could not be taken by a domestic corporation under the provisions of IC 27-1-6-3. [Acts 1935, ch. 162, § 228, p. 588; 1969, ch. 164, § 7; P.L.252-1985, § 73.]

Cross References. Corporate name, domestic companies, IC 27-1-6-3.

Opinions of Attorney General. Any foreign insurance company now attempting to be

admitted to do business in this state must meet the requirements of this section regardless of the date the company was organized. 1963, No. 41, p. 225.

27-1-17-4. Procedure for admission. — Whenever a foreign or an alien insurance company desires to be admitted to do an insurance business in this state, it shall execute in the English language and present the following to the department, at its office, accompanied by the fees prescribed by law:

(a) A copy of its articles of incorporation or association, with all amendments thereto, duly authenticated by the proper officer of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States.

(b) An application for admission, executed in the manner provided in this chapter, setting forth:

(1) the name of such company;

(2) the location of its principal office or place of business without this state;

(3) the names of the states in which it has been admitted or qualified to do business;

(4) the character of insurance business under its articles of incorporation or association which it intends to transact in this state, which must conform to the class or classes set forth in the provisions of IC 27-1-5-1;

(5) the total authorized capital stock of the company and the amount thereof issued and outstanding, and the surplus required of such company by the laws of the state, country, province, or government under which it is organized, or the state in which it is domiciled in the United States, if a stock company, which shall equal at least the requirements set forth in section 5(a) [IC 27-1-17-5(a)] of this chapter;

(6) the total amount of assets and the surplus of assets over all its liabilities, if other than a stock company, which shall equal at least the requirements set forth in section 5(b) [IC 27-1-17-5(b)] of this chapter;

(7) if an alien company, the surplus of assets invested according to the laws of the state in the United States where it has its deposit, which shall equal at least the requirements set forth in section 5(c) [IC 27-1-17-5(c)] of this chapter; and

(8) such further and additional information as the department may from time to time require.

The application shall be signed in duplicate, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified under oath by the officers signing the same.

(c) A statement of its financial condition and business, in the form prescribed by law for annual statements, signed and sworn to by the president or secretary or other principal officers of the company; provided, however, that an alien company shall also furnish a separate statement comprising only its condition and business in the United States, which shall be signed and sworn to by its United States manager.

(d) A copy of the last report of examination certified to by the insurance commissioner or other proper supervisory official of the state in which such company is domiciled; provided, however, that the commissioner may cause an examination to be made of the condition and affairs of such company before authority to transact business in this state is given.

(e) A certificate from the proper official of the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States, that it is duly organized or incorporated under those laws and authorized to make the kind or kinds of insurance which it proposes to make in this state.

(f) A copy of its bylaws or regulations, if any, certified to by the secretary or similar officer of the insurance company.

(g) Copies of forms of all policies which the insurance company proposes to issue in this state and also copies of the forms of application for such policies.

(h) A duly executed power of attorney in a form prescribed by the department which constitutes and appoints an individual or a corporate resident of Indiana, or an authorized Indiana insurer, as the insurance company's agent, its true and lawful attorney upon whom all lawful processes in any action in law or in equity against it shall be served. Such power of attorney shall contain an agreement by the insurance company that any lawful process against it which may be served upon the agent as its attorney shall be of the same force and validity as if served upon the insurance company and that such power of attorney shall continue in force and be irrevocable so long as any liability of the insurance company remains outstanding in this state. Such power of attorney shall be executed by the president and secretary of the insurance company or other duly authorized officers under its seal and shall be accompanied by a certified copy of the resolution of the board of directors of the company making said appointment and authorizing the execution of said power of attorney. Service of any lawful process shall be by delivering to and leaving with the agent two (2) copies of such process, with copy of the pertinent complaint attached. The agent shall forthwith transmit to the defendant company at its last known principal place of business by registered or certified mail, return receipt requested, one (1) of the copies of such process, with complaint attached,

the other copy to be retained in a record which shall show all process served upon and transmitted by him. Such service shall be sufficient provided the returned receipt or, if the defendant company shall refuse to accept such mailing, the registered mail together with an affidavit of plaintiff or his attorney stating that service was made upon the agent and forwarded as above set forth but that such mail was returned by the post office department is filed with the court. The agent shall make information and receipts available to plaintiff, defendant or their attorneys. No plaintiff or complainant shall be entitled to a judgment by default based on service authorized by this section until the expiration of at least thirty (30) days from the date on which either the post office receipt or the unclaimed mail together with affidavit is filed with the court. Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any company in any other manner permitted by law.

(i) Proof which satisfies the department that it has complied with the financial requirements imposed in this chapter upon foreign and alien insurance companies which transact business in this state and that it is entitled to public confidence and that its admission to transact business in this state will not be prejudicial to public interest. [Acts 1935, ch. 162, § 229, p. 588; 1967, ch. 127, § 5; P.L.252-1985, § 74; P.L.116-1994, § 35; P.L.130-1994, § 25; P.L.268-1999, § 6.]

Compiler's Notes. P.L.268-1999, § 22, subsection (a), effective July 1, 1999, provides that this section, as amended by P.L.268-1999, applies "upon receipt by the commissioner of the department of insurance of the designation from the insurer of an agent for service of process." P.L.268-1999, § 22, subsection (b), provides that P.L.268-1999, § 22, expires June 30, 2004.

Opinions of Attorney General. Where a foreign stock life insurance company and

noninsurance corporation which owns all the stock of the life insurance company, both domiciled in the same state, merge, there are shareholders in existence and a corporate entity exists in the surviving life insurance company which would legally entitle it to execute and follow procedures necessary to be permitted to do business in Indiana and empower the commissioner of the insurance department to consider such request. 1964, No. 1, p. 1.

NOTES TO DECISIONS

ANALYSIS

In general.
Doing business in state.
Fidelity bond.
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In General.

Under the provisions of a prior similar provision requiring admission of a foreign insurance company to do an insurance business in this state, a person could not sue the company in this state on a claim not arising out of a contract for insurance. *Rhem v. German Ins. & Sav. Inst.*, 125 Ind. 135, 25 N.E. 173 (1890); *Byers v. Union Cent. Life Ins. Co.*,

17 Ind. App. 101, 46 N.E. 475 (1897). But see *United States Health & Accident Ins. Co. v. Batt*, 49 Ind. App. 277, 97 N.E. 195 (1912); *Ransburg v. U.S. Fid. & Guar. Co.*, 71 Ind. App. 304, 124 N.E. 765 (1919).

Jurisdiction of a court over a foreign insurance company in an action brought in the county in which the company had an agent other than the county in which the insured and the agent who issued the policy resided could only be raised by a special plea alleging the parts necessary to raise the issue. *Ohio Farmers Ins. Co. v. Stowman*, 16 Ind. App. 205, 44 N.E. 558 (1896).

Doing Business in State.

If an insurance company in another state issued policies upon property in this state and

Doing Business in State. (Cont'd)

sent the same to an agent in this state for delivery and the collection of premiums, such company did business in this state and could be sued here. *McCord v. Illinois Nat'l Fire Ins. Co.*, 47 Ind. App. 602, 94 N.E. 1053 (1911).

Fidelity Bond.

In an action on a fidelity bond, nonresident employees who were principals in the bond were not essential parties. *Ransburg v. U.S. Fid. & Guar. Co.*, 71 Ind. App. 304, 124 N.E. 765 (1919) (decided under prior law).

Matters Not Connected with Insurance.

Before the enactment of Acts 1901, ch. 175, a foreign insurance company could not be sued in this state on claims not arising out of contracts of insurance. *Rehm v. German Ins. & Sav. Inst.*, 125 Ind. 135, 25 N.E. 173 (1890); *Byers v. Union Cent. Life Ins. Co.*, 17 Ind. App. 101, 46 N.E. 475 (1897).

Courts in this state have jurisdiction over any claim or demand against foreign insurance companies doing business in this state. *United States Health & Accident Ins. Co. v. Clark*, 41 Ind. App. 345, 83 N.E. 760 (1908); *United States Health & Accident Ins. Co. v. Batt*, 49 Ind. App. 277, 97 N.E. 195 (1912); *Ransburg v. U.S. Fid. & Guar. Co.*, 71 Ind. App. 304, 124 N.E. 765 (1919).

A foreign insurance company could be sued in this state on an account, or other common law liability, not connected with an insurance contract. *United States Health & Accident Ins. Co. v. Batt*, 49 Ind. App. 277, 97 N.E. 195 (1912); *Ransburg v. U.S. Fid. & Guar. Co.*, 71 Ind. App. 304, 124 N.E. 765 (1919).

Power of Attorney.

The execution of a power of attorney by a foreign insurance company authorizing service of process upon the commissioner of insurance as its attorney-in-fact pursuant to

statute constitutes a contract by which the insurance company agreed to be bound, and cannot be construed to include cases beyond the purview of the agreement and the intent of the parties. *General Am. Life Ins. Co. v. Carter*, 222 Ind. 557, 54 N.E.2d 944, appeal dismissed, 323 U.S. 676, 65 S. Ct. 188, 89 L. Ed. 549 (1944).

Process.

Process may be served on agents of foreign companies, although such agents were not residents of this state. *Rush v. Foos Mfg. Co.*, 20 Ind. App. 515, 51 N.E. 143 (1898).

The special legislation concerning service of process upon foreign insurance companies excepts them from the provisions of other statutes affecting foreign corporations doing business in this state. *General Am. Life Ins. Co. v. Carter*, 222 Ind. 557, 54 N.E.2d 944, appeal dismissed, 323 U.S. 676, 65 S. Ct. 188, 89 L. Ed. 549 (1944).

An action on a life insurance policy could not be maintained in this state against a foreign insurance company authorized to do business herein by service of process on the Indiana commissioner of insurance, where the policy was applied for by mail by insured who was a nonresident, and plaintiff beneficiary was also a nonresident. *General American Life Ins. Co. v. Carter*, 222 Ind. 557, 54 N.E.2d 944, appeal dismissed, 323 U.S. 676, 65 S. Ct. 188, 89 L. Ed. 549 (1944).

Purpose.

This statute is intended to bring such an insurance company within the jurisdiction of the courts of this state only for the purpose of actions arising out of contract made within the state or with residents of the state. *General American Life Ins. Co. v. Carter*, 222 Ind. 557, 54 N.E.2d 944, appeal dismissed, 323 U.S. 676, 65 S. Ct. 188, 89 L. Ed. 549 (1944).

Collateral References. Foreign insurance company as subject to service of process in action on policy. 44 A.L.R.2d 416.

27-1-17-5. Financial requirements. — (a) Every foreign insurance company authorized to do business in this state shall have, in the case of a stock company, at least the capital and surplus required of a domestic insurance company which makes the same kind or kinds of insurance.

(b) Every foreign insurance company authorized to do business in this state shall have, in the case of other than a stock company, at least the assets with a surplus of assets over all liabilities required of a domestic insurance company which makes the same kind or kinds of insurance, and

an additional contingent liability of its policyholders equal to not less than the cash premium expressed in the policies in force, if such contingent liability is required of a like domestic insurance company.

(c) Every alien insurance company authorized to do business in this state shall have the surplus of assets invested according to the laws of the state in the United States, wherein it has its deposit, held in the United States in trust for the benefit and security of all its policyholders and creditors in the United States, over all its liabilities in the United States, of an amount equal to the surplus of assets required of a like domestic insurance company. [Acts 1935, ch. 162, § 230, p. 588.]

Cross References. Financial requirements for domestic stock companies, IC 27-1-6-14.

27-1-17-6. Deposit of alien companies. — Every alien company shall deposit with the department securities of the amount and value of one hundred thousand dollars (\$100,000) invested in the classes of securities in which insurance companies are permitted by the laws of this state to make investments, or, satisfy the department that it has on deposit with the proper official of a state of the United States, authorized by the laws of such state to accept such deposit, securities of the amount and value of one hundred thousand dollars (\$100,000), of the classes in which like insurance companies of such state are permitted to make their investments, for the benefit and security of all its policyholders and creditors in the United States, and the company shall file with the department the certificate of such official of any such deposit held by him. [Acts 1935, ch. 162, § 231, p. 588.]

Cross References. Deposits required for domestic stock companies, IC 27-1-6-14.
Deposits to secure policies and creditors, IC 27-1-20-8.

Withdrawal of reserve deposit on ceasing business, IC 27-1-20-11.

27-1-17-7. Trustees of alien companies. — The directors of an alien company may appoint citizens or corporations of the United States, approved by the commissioner, as its trustees to hold funds and assets in trust for the benefit of the policyholders and creditors of the company in the United States. A certified copy of the record of such appointment and of the deed of trust shall be filed with the commissioner, who may examine such trustees and any officers and agents, books and papers of the company in the same manner as he may examine officer, agents, books, papers and affairs of insurance companies. The funds and assets so held by such trustees shall, with the deposits otherwise made by the company and the funds and assets held by the company in the United States for the benefit of its policyholders and creditors in the United States, constitute the assets of the company for the purpose of making its financial statements required by this law. [Acts 1935, ch. 162, § 232, p. 588.]

27-1-17-8. Issuance of certificate of authority. — When any foreign or alien insurance company has complied with the provisions of sections 1 through 7 [IC 27-1-17-1 through IC 27-1-17-7] of this chapter, then the commissioner may issue a certificate of authority, pursuant to IC 27-1-3-20, which shall license such foreign or alien insurance company to transact only the kind or kinds of insurance specified in its application for admission, and which shall expire on midnight of April 30 next, following the date of issuance. [Acts 1935, ch. 162, § 233, p. 588; P.L.252-1985, § 75.]

Cross References. Amended certificate of authority, IC 27-1-18-4.

Certificates of authority, issuance, IC 27-1-3-20, IC 27-1-6-18.

Opinions of Attorney General. The insurance commissioner of Indiana may include in a certificate authorizing a foreign life insurance company to do business in Indiana

not merely the power to transact the life insurance business in Indiana, but the further authorization to exercise the rights, privileges and powers of a domestic company in Indiana, including the investment powers granted by IC 27-1-12-2 — IC 27-1-12-3. 1949, No. 93, p. 353.

27-1-17-9. Company in hazardous financial condition. — (a) If, upon satisfactory evidence, it appears to the commissioner that any foreign or alien insurance company doing business in this state is in a hazardous financial condition as evidenced by the existence of any conditions indicated by, but not limited to, the following, he shall take such action as set forth in subsection (b) or (c), compliance herewith not precluding action under other provisions of law:

(1) It cannot meet the current applicable requirements for the conduct of the business of insurance in this state.

(2) It has commenced, or has attempted to commence, any voluntary liquidation or dissolution proceeding, or any proceeding to procure the appointment of a receiver, liquidator, rehabilitator, sequestrator, conservator, or similar officer for itself.

(3) It is the subject of liquidation or dissolution proceedings undertaken by another state, or any other proceeding undertaken by another state to procure the appointment of a receiver, liquidator, rehabilitator, sequestrator, conservator, or similar officer.

(4) Its further transaction of business would be hazardous to its policyholders, contract holders, or the public as shown by the following conduct or other conduct:

(A) Investment practices not providing availability within a reasonable time of sufficient moneys to promptly meet any demand which might in the ordinary course of business be properly made against it.

(B) Embezzlement, sequestration, or wrongful diversion of any of its assets by any of its officers or directors.

(C) Willful violation of its charter or any law of this state.

(b) Upon finding that a company is in a hazardous financial condition as described in subsection (a), the commissioner shall order the company to take such action as reasonably may be required to correct the situation, such as the following:

(1) Requiring the company to reduce the volume of new business being

accepted to an amount and period of time specified by the commissioner in the manner prescribed by his order.

(2) Requiring the submission of such reinsurance contracts for approval and make such requirements relative to the company's reinsurance program as the commissioner deems necessary to protect the interests of Indiana policyholders.

(3) Requiring the company to reinsure all or any part of its Indiana business with a company duly authorized to transact such business in this state.

(4) Requiring a contribution to surplus which will increase the company's surplus for such a period of time, and by such an amount, and in such a manner, as the commissioner may deem necessary and essential.

(5) Requiring the company to maintain a special deposit with the commissioner of insurance of this state in cash or securities of the kinds in which a domestic insurer is permitted to invest its funds, in an amount not less than the lesser of:

(A) The amounts required to be maintained as reserves, for losses and loss adjustment expenses on Indiana business and reserves for unearned premiums on Indiana business. (In determining the amount of deposit required by this subdivision, the reserves for losses, loss adjustment expenses, and unearned premiums shall be reduced only for reinsurance cessions to approved reinsurers which maintain with an independent custodian cash or marketable securities in an amount not less than the sum of the reinsurer's reserves for losses, loss adjustment expenses, and unearned premiums in regard to reinsurance assumed); and

(B) Six hundred thousand dollars (\$600,000).

Any deposit required by this subsection shall be for the protection and benefit of Indiana policyholders or claimants only and shall not be withdrawn without the consent of the commissioner. The commissioner shall require such reports as may be necessary to implement supervision of any order issued under this subsection.

(c) If the company fails to comply with the commissioner's order under subsection (b) within sixty (60) days or if the commissioner finds that the company's financial condition is so serious as to make any efforts under subsection (b) meaningless to the company's policyholders, claimants, or the public, the commissioner shall suspend the authority granted to such company to do business in this state. If no demand for a hearing is made by the suspended company within thirty (30) days after suspension, such suspension shall become a revocation of the authority to transact the business of insurance in this state. Any such hearing shall be held in compliance with IC 4-21.5-3. If during such a hearing satisfactory evidence is forced to indicate that the company is in a hazardous financial condition as described in subsection (a), the commissioner shall revoke the authority of the company to transact the business of insurance in this state. [IC 27-1-17-9, as added by Acts 1977, P.L. 281, § 4; P.L.7-1987, § 138.]

CHAPTER 18

INSURANCE LAW — FOREIGN AND ALIEN COMPANIES
— GENERAL PROVISIONS

SECTION.

- 27-1-18-1. Life policies — Provisions — Valuation.
- 27-1-18-2. Taxes.
- 27-1-18-3. Amendments to charter.

SECTION.

- 27-1-18-4. Amended certificate.
- 27-1-18-5. Annual statement — Publication.
- 27-1-18-6. Withdrawal from state.

27-1-18-1. Life policies — Provisions — Valuation. — The policies of a foreign or alien life insurance company, may, when issued in this state, contain any provision which the laws of the state, territory, district, or country under which the company is organized prescribes shall be in such policies and the method of valuation of such policies required by the laws of the state, territory, district, or country where such company is organized, shall be accepted by the department, and the policies of a life insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district, or country contain any provisions required by the laws of the state, territory, district, or country in which the same are issued or delivered, anything in this article other than in IC 27-1-12-5(5) to the contrary notwithstanding, Provided That the provisions of the laws of such state, territory, district, or country are shown to the satisfaction of the department to as carefully safeguard the policyholders as do the laws of this state. [Acts 1935, ch. 162, § 234, p. 588; P.L.252-1985, § 76.]

Compiler's Notes. The reference near the end of the section to IC 27-1-12-5(5) probably should be to IC 27-1-12-5(a)(5).

Valuation of life policies, IC 27-1-12-9, IC 27-1-12-10.

Cross References. Required provisions for life policies, IC 27-1-12-5.

27-1-18-2. Taxes. — (a) Every insurance company not organized under the laws of this state, and each domestic company electing to be taxed under this section, and doing business within this state shall, on or before March 1 of each year, report to the department, under the oath of the president and secretary, the gross amount of all premiums received by it on policies of insurance covering risks within this state, or in the case of marine or transportation risks, on policies made, written, or renewed within this state during the twelve (12) month period ending on December 31 of the preceding calendar year. From the amount of gross premiums described in this subsection shall be deducted:

- (1) considerations received for reinsurance of risks within this state from companies authorized to transact an insurance business in this state;
- (2) the amount of dividends paid or credited to resident insureds, or used to reduce current premiums of resident insureds;
- (3) the amount of premiums actually returned to residents on account of applications not accepted or on account of policies not delivered; and

(4) the amount of unearned premiums returned on account of the cancellation of policies covering risks within the state.

(b) A domestic company shall be taxed under this section only in each calendar year with respect to which it files a notice of election. The notice of election shall be filed with the insurance commissioner and the commissioner of the department of state revenue on or before November 30 in each year and shall state that the domestic company elects to submit to the tax imposed by this section with respect to the calendar year commencing January 1 next following the filing of the notice. The exemption from license fees, privilege, or other taxes accorded by this section to insurance companies not organized under the laws of this state and doing business within this state which are taxed under this chapter shall be applicable to each domestic company in each calendar year with respect to which it is taxed under this section. In each calendar year with respect to which a domestic company has not elected to be taxed under this section it shall be taxed without regard to this section.

(c)(1) For the privilege of doing business in this state, every insurance company required to file the report provided in this section shall pay into the treasury of this state an amount equal to two percent (2%) of the excess, if any, of the gross premiums over the allowable deductions.

(c)(2) Payments of the tax imposed by this section shall be made on a quarterly estimated basis. The amounts of the quarterly installments shall be computed on the basis of the total estimated tax liability for the current calendar year and the installments shall be due and payable on or before April 15, June 15, September 15, and December 15, of the current calendar year.

(c)(3) Any balance due shall be paid in the next succeeding calendar year at the time designated for the filing of the annual report with the department.

(c)(4) Any overpayment of the estimated tax during the preceding calendar year shall be allowed as a credit against the liability for the first installment of the current calendar year.

(c)(5) In the event a company subject to taxation under this section fails to make any quarterly payment in an amount equal to at least:

(i) twenty-five percent (25%) of the total tax paid during the preceding calendar year; or

(ii) twenty per cent (20%) of the actual tax for the current calendar year;

the company shall be liable, in addition to the amount due, for interest in the amount of one percent (1%) of the amount due and unpaid for each month or part of a month that the amount due, together with interest, remains unpaid. This interest penalty shall be exclusive of and in addition to any other fee, assessment, or charge made by the department.

(d) The taxes under this article shall be in lieu of all license fees or privilege or other tax levied or assessed by this state or by any municipality, county, or other political subdivision of this state. No municipality, county, or other political subdivision of this state shall impose any license fee or privilege or other tax upon any insurance company or any of its agents for

the privilege of doing an insurance business therein, except the tax authorized by IC 22-12-6-5. However, the taxes authorized under IC 22-12-6-5 shall be credited against the taxes provided under this chapter. This section shall not be construed to prohibit the levy and collection of state, county, or municipal taxes upon real and tangible personal property of such company, or to prohibit the levy of any retaliatory tax, fine, penalty, or fee provided by law. However, all insurance companies, foreign or domestic, paying taxes in this state predicated in part on their premium income from policies sold and premiums received in Indiana, shall have the same rights and privileges from further taxation and shall be given the same credits wherever applicable, as those set out for those companies paying only a tax on premiums as set out in this section.

(e) Any insurance company failing or refusing, for more than thirty (30) days, to render an accurate account of its premium receipts as provided in this section and pay the tax due thereon shall be subject to a penalty of one hundred dollars (\$100) for each additional day such report and payment shall be delayed, not to exceed a maximum penalty of ten thousand dollars (\$10,000). The penalty may be ordered by the commissioner after a hearing under IC 4-21.5-3. The commissioner may revoke all authority of such defaulting company to do business within this state, or suspend such authority during the period of such default, in the discretion of the commissioner. [Acts 1935, ch. 162, § 235, p. 588; 1963, ch. 301, § 1; 1971, P.L. 386, § 1; P.L.252-1985, § 77; P.L.245-1987, § 15; P.L.268-1999, § 7.]

Cross References. Safety education and training bureau, taxation of insurance carriers licensed to do workmen's compensation business, IC 22-8-1.1-45 — IC 22-8-1.1-48.

Indiana Law Review. Indiana's New Financial Institutions Tax: An Extension of State Taxing Power Over Interstate Financial Transactions, 23 Ind. L. Rev. 551 (1990).

Opinions of Attorney General. The performance of the service of collecting premiums under an order of court and paying them into a court fund is not the doing of an insurance business within this state where the nonresident company collecting the premiums does not own the business represented by the outstanding policies of another nonresident insolvent corporation, the first company acting as agent, and the gross premiums are not subject to privilege license tax. 1941, p. 361.

Losses paid by reinsuring company upon Indiana risks are not deductible. 1946, No. 81, p. 313.

Where Indiana risks are reinsured, the losses on direct writing are deductible from amount of gross premiums without reduction by amount recovered from reinsurer. 1946, No. 81, p. 313.

In the absence of any previous agreement between Missouri insurance commissioner and Indiana relating to comity between their

departments, Missouri reciprocal companies doing business in Indiana must pay the state of Indiana for the privilege of doing business at the rate provided by this section. 1949, No. 28, p. 112.

Insurance company which pays a tax on premiums pursuant to the Indiana Insurance Law is not exempt from the state gross retail tax and use tax on its purchase of tangible personal property. 1969, No. 4, p. 11.

The department of insurance has authority to make refunds to insurance companies for the overpayment of gross premium privilege taxes for the preceding calendar year if the overpayment exceeds the amount allowed as a credit against the liability for the first installment of the current calendar year. The money to be refunded does not belong to the state but belongs to the insurance company which overpaid its taxes. 1980, No. 80-2, p. 7.

As there is no authority for the department to retain any funds of an insurance company in excess of the amounts which are to be allowed as a credit against the tax liability of an insurance company for the first installment of the current calendar year, the department should refund to insurance companies any such excess amounts, unless permitted to retain same by an insurance company. 1980, No. 80-2, p. 7.

NOTES TO DECISIONS

Constitutionality.

This act is not invalid as constituting as undue burden upon interstate commerce or as discriminating against interstate commerce, especially in view of the act of Congress of March 9, 1945, by which it is declared that the continued regulation and taxation by the several states of the business of insurance is in the public interest, and that such business, and every person engaged therein, shall be subject to the laws of the several states which relate to the regulation or taxation of such business. *State v. Prudential Ins. Co.*, 224 Ind. 17, 64 N.E.2d 150 (1945), aff'd, 328 U.S. 823, 66 S. Ct. 1364, 90 L. Ed. 1603 (1946).

The taxing of premiums received by foreign corporations on policies of insurance covering risks within the state under this act does not offend against the rule that a state may not tax the privilege of engaging in interstate commerce, notwithstanding the fact that the statute states that the tax shall be paid "for the privilege of doing business in this state," where the business of the insurance company taxed is purely local and intrastate in character. *State v. Prudential Ins. Co.*, 224 Ind. 17,

64 N.E.2d 150 (1945), aff'd, 328 U.S. 823, 66 S. Ct. 1364, 90 L. Ed. 1603 (1946).

This act does not contravene the equal protection clause of the Fourteenth Amendment to the federal Constitution. *State v. Prudential Ins. Co.*, 224 Ind. 17, 64 N.E.2d 150 (1945), aff'd, 328 U.S. 823, 66 S. Ct. 1364, 90 L. Ed. 1603 (1946).

The act of Congress of March 9, 1945, which expressly states that the continued regulation and taxation by the several states of the business of insurance is in the public interest, and that such business and every person engaged therein shall be subject to the laws of the several states which relate to the regulation or taxation of such business, is an exercise of the right of Congress to regulate interstate phases and aspects of the insurance business, by authorizing the states to continue their regulation and taxation of such business in the manner developed over 75 years of experience. *State v. Prudential Ins. Co.*, 224 Ind. 17, 64 N.E.2d 150 (1945), aff'd, 328 U.S. 823, 66 S. Ct. 1364, 90 L. Ed. 1603 (1946).

27-1-18-3. Amendments to charter. — Each foreign or alien corporation admitted to do business in this state shall keep on file in the office of the department a duly authenticated copy of each instrument amending its articles of incorporation or association, but the filing of any such instrument shall not of itself enlarge or alter the character of business which the foreign corporation is authorized to transact in this state as set forth in the certificate of admission, unless such foreign corporation apply for and receive an amended certificate of admission as provided for in section 4 [IC 27-1-18-4] of this chapter. [Acts 1935, ch. 162, § 236, p. 588; P.L.252-1985, § 78.]

Cross References. Amendment of articles of incorporation, IC 27-1-8.

27-1-18-4. Amended certificate. — (a) Any foreign or alien corporation admitted to do business in this state may alter or enlarge the character of the business which it is authorized to transact in this state under its articles of incorporation or association, and any amendments thereof filed with the department as provided in section 3 [IC 27-1-18-3] of this chapter, by procuring an amended certificate of authority from the department in the manner provided in subsection (b).

(b) Whenever a foreign or alien corporation desires to procure such amended certificate, it shall present to the department at its office, accompanied by the fees prescribed by law, an application for an amended certificate of authority, setting forth the change desired in the kind or kinds of insurance business under its articles of incorporation or association which it intends to thereafter carry on in this state; the application shall be filed

in duplicate in the form prescribed by the department by the president or a vice president and the secretary or an assistant secretary of the corporation, and verified by the oaths of the officers signing the same.

(c) Upon the presentation of such application, accompanied by the corporation's certificate of authority, the department, if it find that it conforms to law and that the foreign or alien company has fulfilled the requirements set forth in subsection (b) and in section 3 of this chapter, may endorse its approval upon each of the duplicate copies of the application, and, in case of the approval of such application and when all fees required by law shall have been paid, shall file one (1) copy of the application in its office, cancel the certificate of authority presented with the application, and issue to the corporation a new certificate of authority, which certificate shall set forth the kind or kinds of business that the corporation is authorized thereafter to transact in this state, which shall be accompanied by one (1) copy of the application bearing the endorsement of the approval of the department.

(d) Upon the issuance of the new certificate of authority by the department, the corporation therein named shall have authority thereafter to transact in this state the kind or kinds of insurance business set forth in such certificate, subject to the terms and conditions prescribed in this article. [Acts 1935, ch. 162, § 237, p. 588; P.L.252-1985, § 79.]

Cross References. Issuance and effect of amended certificate of authority, IC 27-1-8-9, IC 27-1-8-10.

27-1-18-5. Annual statement — Publication. — At the time of filing its annual statement, an alien or foreign company shall submit, on a form prescribed by the department, a condensed statement of its assets and liabilities as of December 31 of the preceding year. If the department, on examination of such statement, determines from information available to it that it is true and correct, it shall cause such statement to be published in a newspaper in this state selected by the department. In the event the department determines that the statement submitted by a company is inaccurate or incorrect, it shall, after giving the company notice of the proposed changes and an opportunity to be heard, certify the corrected statement and proceed with its publication as above provided. The company shall bear the expenses of the publication, but in no event shall an amount exceeding forty dollars (\$40) be charged for such publication. [Acts 1935, ch. 162, § 238, p. 588; 1971, P.L. 385, § 4; P.L.267-1987, § 2.]

Cross References. Annual statements, IC 27-1-3-13, IC 27-1-20-21.

Contents of advertisements purporting to show financial condition, IC 27-1-20-20.

False advertising, service of process, IC 27-4-6.

27-1-18-6. Withdrawal from state. — (a) Any foreign or alien corporation admitted to do business in this state may withdraw from this state by surrendering its certificate of authority and by filing with the department, accompanied by the fees prescribed by law, a statement of withdrawal setting forth:

- (1) The name of the corporation and the state, country, province, or government wherein it is incorporated or organized, or the state in which it is domiciled in the United States;
- (2) The date of the issuance of the original certificate of authority;
- (3) That it surrenders its authority to transact business in this state and returns for cancellation its certificate of authority; and
- (4) A post office address to which the commissioner may mail a copy of any process against the withdrawing company that may be served upon him.

(b) Such statement shall be signed, in the form prescribed by the department, by the president or a vice president and the secretary or an assistant secretary of the corporation, and shall be verified by the oaths of the officers signing the same.

(c) The statement as provided for in this section shall be filed with the department, accompanied by a report of taxable premiums as provided for in section 2 [IC 27-1-18-2] of this chapter, the amount of tax shown to be due and payable by such report, its certificate of authority, and after the payment of the fees prescribed by law, the department shall cancel the certificate of authority and endorse the same thereon, and return such cancelled certificate to the company, and the authority of the company to transact an insurance business in this state shall cease, but the withdrawal and cessation of business shall not affect any action by or against such corporation pending at the time thereof, or any right of action existing at or before the filing of such statement, in favor of or against such company. [Acts 1935, ch. 162, § 239, p. 588; P.L.252-1985, § 80.]

Collateral References. Foreign insurance company as subject to service of process in action on policy. 44 A.L.R.2d 416.

CHAPTER 19

INSURANCE LAW — REORGANIZATION OF FOREIGN COMPANIES

SECTION.

- 27-1-19-1. Acceptance of this article.
 27-1-19-2. Articles of reorganization.
 27-1-19-3. Procedure.
 27-1-19-4. Issuance of certificate of authority.

SECTION.

- 27-1-19-5. Rights and liabilities.
 27-1-19-6. Transfer of assets.
 27-1-19-7. Effect of certificate of authority.
 27-1-19-8. Directors.

27-1-19-1. Acceptance of this article. — Any foreign life insurance company authorized to do business in this state, and empowered by the laws of the state, territory or insular possession of the United States, or the District of Columbia under which it was incorporated to reincorporate, is hereby authorized to reorganize under the laws of this state by compliance with the provisions of this chapter and thereafter be a new corporation of this state under this article. [Acts 1935, ch. 162, § 240, p. 588; P.L.252-1985, § 81.]

27-1-19-2. Articles of reorganization. — (a) The board of directors of any such company desiring to reorganize under this article shall, after full

compliance with the laws of state, territory, or insular possession of the United States, or the District of Columbia, under which the company was incorporated or organized, by a resolution adopted by a majority vote of the members of such board, approve and adopt articles of reorganization setting forth:

- (1) The name of the company;
- (2) The location of its principal office and the location of its proposed principal office in this state;
- (3) The date of its incorporation or organization;
- (4) A designation of the statute under which it was organized;
- (5) A declaration that it accepts all of the terms and provisions of this article; and
- (6) A restatement of such provisions of its articles of incorporation or association as may be deemed advisable so long as the provisions restated would have been authorized by this article as provisions of original articles of incorporation for a company organized under this article.

(b) Upon the approval and adoption thereof by the board of directors, the articles of reorganization shall be executed and signed in triplicate originals by the president and the secretary of the company, and acknowledged and sworn to before an officer authorized to take the acknowledgments of deeds by the officers signing the same. [Acts 1935, ch. 162, § 241, p. 588; P.L.252-1985, § 82.]

27-1-19-3. Procedure. — The articles of reorganization shall be presented to the department, accompanied by a certified copy of the resolution of the board of directors adopting and approving the same, signed by the president and secretary of the company. The department may approve or disapprove the articles of reorganization, in the same manner as provided in IC 27-1-6-8. In the event the department approves the articles of reorganization as provided, it shall then submit them to the attorney general for the state of Indiana, who shall examine such articles and endorse his approval thereon and return them to the department in the same manner as provided in IC 27-1-6-9. When the articles of reorganization have been approved by the attorney general and returned to the department, the department shall present them to the secretary of state for the state of Indiana, who shall endorse his approval thereon in the same manner as provided in IC 27-1-6-10 and file one (1) copy in his office and return the other two (2) copies to the company or its representatives. [Acts 1935, ch. 162, § 242, p. 588; P.L.252-1985, § 83.]

27-1-19-4. Issuance of certificate of authority. — When the provisions of sections 1, 2, and 3 [IC 27-1-19-1, IC 27-1-19-2 and IC 27-1-19-3] of this chapter have been complied with and the applicant has fulfilled all the requirements imposed by this article upon a similar domestic company doing a like business, then the commissioner may, in his discretion, issue a

certificate of authority as provided in IC 27-1-6-18. [Acts 1935, ch. 162, § 243, p. 588; P.L.252-1985, § 84.]

27-1-19-5. Rights and liabilities. — Any such corporation so organizing under the provisions of this article is hereby required to faithfully carry out any and all rights, duties, obligations, contracts, and any and all other liabilities of every kind and description existing in its favor or against it at the time of its reorganization under the provisions of this article, and it shall have the rights, privileges, powers, duties, and responsibilities, unchanged and unaffected, which it had at the time of such reorganization under the provisions of this article; nothing contained in this chapter or authorized by this chapter shall impair or operate to impair the obligations of any contract existing at the time of the creation of the new corporation, but such new corporation shall be subject to and shall assume, carry out, fulfill, and pay all liabilities, obligations, responsibilities, and contracts connected with and arising out of its business prior to such reincorporation. [Acts 1935, ch. 162, § 244, p. 588; P.L.252-1985, § 85.]

27-1-19-6. Transfer of assets. — Upon compliance with the provisions of this article, the entire assets of any such corporation shall thereby become vested in the new corporation. The name of the new corporation may be the same as the former corporation, or, upon resolution of the board of trustees or directors or other governing body, such name may be changed. If such corporation shall be the owner of any real estate situate in said state of Indiana or of any other state, such real estate shall become vested, upon compliance with this statute, in the new corporation, and a copy of such resolution, duly certified by the secretary of state and filed in the recorder's office of the proper county in which such real estate may be situated, shall constitute a conveyance of said real estate to said new corporation. [Acts 1935, ch. 162, § 245, p. 588; P.L.252-1985, § 86.]

27-1-19-7. Effect of certificate of authority. — Such new corporation shall hereafter make its reports in accordance with the laws of the state of Indiana, and shall be subject to the exclusive regulation and supervision of the department of insurance of the state of Indiana, and thereafter shall make its applications for the purpose of doing business in other states, and countries, as a corporation of the state of Indiana, and shall be subject to regulation and supervision by the insurance departments of other states and countries as a foreign insurance company. In its resolution for reincorporation under this law, it shall state the location of its principal office, which shall be in this state. [Acts 1935, ch. 162, § 246, p. 588.]

27-1-19-8. Directors. — The board of directors, or other governing body, of such corporation, shall remain for the new corporation, the same as for the old, until changed by the board of directors of the new corporation. Their election and terms of office shall remain the same as they were prior to the new incorporation. [Acts 1935, ch. 162, § 247, p. 588.]

CHAPTER 20

INSURANCE LAW — MISCELLANEOUS

SECTION.

27-1-20-1. Deposits with department — Insurance.

27-1-20-2. [Repealed.]

27-1-20-3. Prior deposits.

27-1-20-4. Valuation of defaulted securities.

27-1-20-5. Deposits of reinsured company.

27-1-20-6. Withdrawal of securities of reorganizing corporation.

27-1-20-7. Pledging deposited securities.

27-1-20-8. Deposit of securities or assets.

27-1-20-9. Changing securities.

27-1-20-10. Interest on deposits.

27-1-20-11. Withdrawal of deposits on ceasing business.

27-1-20-12. Retaliatory provisions.

27-1-20-13. Fees.

27-1-20-14. Pension plan or system.

27-1-20-15. Completion of organization.

27-1-20-16 — 27-1-20-18. [Repealed.]

27-1-20-19. Deceptive statements.

27-1-20-20. Contents of advertisements.

27-1-20-21. Annual statement.

27-1-20-21.1. [Repealed.]

27-1-20-21.2. Penalty for failure to file annual statement.

27-1-20-21.3. Addition to statement required under IC 27-1-20-21.

SECTION.

27-1-20-22. Verified accounts, reports or other papers.

27-1-20-23. Actions prohibited.

27-1-20-24. [Repealed.]

27-1-20-25. Lloyds or assessment plan prohibited — Requirements for reciprocal plan, interinsurer or individual underwriter.

27-1-20-26. Farmers' mutuals excepted.

27-1-20-27. Mutual fire companies to insure farm property excepted.

27-1-20-28. Worker's compensation insurance excepted.

27-1-20-29. Abstract and title guaranty companies previously organized excepted.

27-1-20-30. Rebates.

27-1-20-31. Interlocking directorates.

27-1-20-32. Captions not to affect interpretation.

27-1-20-33. Filing of annual statement and quarterly statements with National Association of Insurance Commissioners.

27-1-20-34. Rating required for insurer of exempt commercial policyholder.

27-1-20-1. Deposits with department — Insurance. — The department, in the name of the State of Indiana, and for the benefit of the owners of all securities subject to negotiation by delivery, and deposited with the department or under its supervision, shall purchase and maintain insurance, in an aggregate amount not to exceed one million dollars, against loss from any cause that the department may deem appropriate. [Acts 1935, ch. 162, § 248, p. 588; 1971, P.L. 385, § 5.]

Cross References. Indiana Insurance Guaranty Association Law, IC 27-6-8.

27-1-20-2. [Repealed.]

Compiler's Notes. This section, dealing with the authorization of excess deposits of domestic insurance companies doing business

outside Indiana, was repealed by Acts 1971, P.L. 1, § 8.

27-1-20-3. Prior deposits. — Eligible investments made or deposited prior to March 8, 1935, shall continue to be eligible for deposit, subject, however, to section 4 [IC 27-1-20-4] of this chapter. [Acts 1935, ch. 162, § 250, p. 588; P.L.252-1985, § 87.]

27-1-20-4. Valuation of defaulted securities. — If any investment when made or purchased conforms to the requirements of this law, or of any law of this state at the date of such deposit, it shall continue to be eligible

for deposit for the full amount thereof so long as: (a) in the case of an interest-bearing investment, the interest is not in default for more than two (2) years; and (b) in the case of a dividend-paying investment, the dividends are not unpaid for more than two (2) years: Provided, however, That when there shall be a default in the payment of interest, or a failure to pay dividends, for a period of more than two (2) years, the commissioner may, if he deems it advisable, require the company to furnish reasonable proof of the then fair value of the investment and the same shall thereafter continue to be a proper investment and available for deposit for the fair value thus determined, not exceeding the amount due on any given promise to pay or the amount paid for a given share of stock. [Acts 1935, ch. 162, § 251, p. 588.]

27-1-20-5. Deposits of reinsured company. — Nothing in this law shall prevent the deposit of securities and other evidences of ownership of property, acquired from a life insurance company domiciled in a foreign state or alien country by a domestic life insurance company under a reinsurance agreement approved by the department, provided such securities and property comply with the investment requirements of the state of incorporation of such reinsured company. [Acts 1935, ch. 162, § 252, p. 588.]

27-1-20-6. Withdrawal of securities of reorganizing corporation. — If a life insurance company, in order to protect itself against loss on account of defaulted securities issued by a public or private corporation and deposited with the department in accordance with this article, enters into an agreement incidental to the financial reorganization of such corporation, and requiring a deposit of such securities with a committee or a depository designated in such agreement, such securities may be withdrawn from the deposit with the department and transferred to the committee or depository designated in such agreement without reducing the deposit credit of such company, Provided That a proper receipt executed by the committee or depository be filed with the department within fifteen (15) days following the date such securities are withdrawn, or within such further period of time as the commissioner may in his discretion allow. [Acts 1935, ch. 162, § 253, p. 588; P.L.252-1985, § 88.]

27-1-20-7. Pledging deposited securities. — Nothing in this article shall prevent a life insurance company, with the commissioner's consent, from withdrawing investments from deposit for the purpose of pledging them for a loan or loans, in which case the difference between the deposit value of such investments and the amount of the obligation or obligations thereby secured shall, unless and until such pledge is foreclosed, continue as a deposit credit, and when such investments are offered for deposit they shall be reinstated in all respects to their former status as a deposit. [Acts 1935, ch. 162, § 254, p. 588; P.L.252-1985, § 89.]

27-1-20-8. Deposit of securities or assets. — (a) As used in this section:

“Securities” means instruments as defined in IC 26-1-8.1-102.

“Clearing corporation” means a corporation as defined in IC 26-1-8.1-102 except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein. “Clearing corporation” may include a corporation organized or existing under the laws of any foreign country and which is legally qualified under such laws to effect transactions in securities by computerized book entry.

“Direct participant” means a bank, trust company, or safety deposit company approved by the commissioner which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.

“Federal Reserve book-entry system” means the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System, or which otherwise have access to such computerized systems.

“Member bank” means a national bank, state bank or trust company which is a member of the Federal Reserve System and through which an insurance company participates in the Federal Reserve book-entry system.

(b) Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the safekeeping of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the Federal Reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one (1) or more certificates of larger denominations. The records of any member bank through which an insurance company holds securities in the Federal Reserve book-entry system, and the records of any custodian through which an insurance company holds securities in a clearing corporation, shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the Federal Reserve book-entry system without, in either case, physical delivery of certificates representing such securities.

(c) Any Indiana law requiring an insurance company operating under the laws of Indiana to deposit assets with the department shall be deemed complied with if such deposit is made pursuant to a written agreement between the insurance company and any bank, trust company or a safety deposit company and approved by the commissioner which limits withdraw-

als to those sanctioned and approved by the department. Deposits so made shall be credited by the department as deposits in its possession on the basis of the insurance company's affidavit describing such deposits as to amount and nature.

(d) Notwithstanding any other provisions of law, securities eligible for deposit under the insurance law of this state relating to deposit of securities by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the Federal Reserve book-entry system. Securities deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the commissioner and shall not be withdrawn by the insurance company without the approval of the commissioner. Any insurance company holding such securities in such manner shall provide to the commissioner evidence issued by its custodian or a member bank through which such insurance company has deposited securities with a clearing corporation or held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and evidence that the records of the custodian, other participant or member bank reflect that such securities are held subject to the order of the commissioner.

(e) The commissioner of insurance is authorized to promulgate rules and regulations governing the deposit by insurance companies of securities with clearing corporations and in the Federal Reserve book-entry system. [Acts 1935, ch. 162, § 255, p. 588; 1945, ch. 175, § 5, p. 420; 1957, ch. 22, § 1; 1981, P.L. 238, § 2; 1982, P.L. 164, § 1; PL.247-1995, § 24; P.L.255-1995, § 4.]

Effective Dates. P.L.247-1995, § 24. July 1, 1996.

Collateral References. Character or class of claims protected by deposit and rank of priority of such claims. 104 A.L.R. 748.

Remedy of creditors of corporation to reach fund or securities deposited with state official as security for corporation's obligations. 101 A.L.R. 496.

27-1-20-9. Changing securities. — Companies shall have the right at any time to change their securities on deposit, by substituting for those withdrawn a like amount in other securities of the character provided for in this article, and whenever the net cash value of policies outstanding and in force against any company is less than the amount of securities then on deposit with the department, said company shall have the right to withdraw such excess, but at least twenty-five thousand dollars (\$25,000) shall remain on deposit. [Acts 1935, ch. 162, § 256, p. 588; P.L.252-1985, § 90.]

27-1-20-10. Interest on deposits. — The department shall permit companies having on deposit with it stocks or bonds as security, to collect the interest accruing on such deposits, delivering to their authorized agents, respectively, the coupons or other evidences of interest as the same become due; but upon default by any company to deposit additional security as called for by the department or pending any proceedings for rehabilitation,

liquidation or conservation of such company, the department shall collect the interest as it becomes due and add the same to the securities in its possession, or under its control, belonging to such company. [Acts 1935, ch. 162, § 257, p. 588.]

27-1-20-11. Withdrawal of deposits on ceasing business. — When any company determines to discontinue its business and ceases to do business in this state and desires to withdraw its deposit made in this state pursuant to this article, the department shall upon the application of the company and at the expense of the company give notice of such intention in a newspaper of general circulation in the state once a week for a period of four (4) weeks. After such publication it shall deliver to such company or its assigns the securities so deposited when it is satisfied upon examination and investigation made by it or under its authority and upon the oaths of the president or a vice president and the secretary or an assistant secretary of the company that all debts and liabilities of every kind due and to become due which the deposit was made to secure are paid and extinguished. [Acts 1935, ch. 162, § 258, p. 588; P.L.252-1985, § 91.]

NOTES TO DECISIONS

Attachment.

Where tort judgment was obtained against insurance company which ceased doing business, court in supplemental proceedings could attach a fund held by the insurance commis-

sioner for the purpose of satisfying bond forfeitures on bonds issued by such company, after it was shown that all bond forfeitures had been paid. *Hudson v. Tyson*, 76 Ind. Dec. 170, 404 N.E.2d 636 (Ind. 1980).

27-1-20-12. Retaliatory provisions. — (a) When, by the laws of any other state, any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions are imposed upon insurance companies of this or other states, or their agents, greater than are required by laws of this state, then the same obligations and prohibitions, of whatever kind, shall, in like manner for like purposes, be imposed upon all insurance companies of such states and their agents. All insurance companies of other nations, under this section, shall be held as of the state where they have elected to make their deposit and establish their principal agency in the United States.

(b) Whenever it shall be made to appear to the insurance commissioner that permission to transact business within any state of the United States, other than the state of Indiana, or within any foreign country, is refused to an insurance company organized under the laws of this state, after a certificate of the solvency and good management of such company has been issued to it by the insurance commissioner and after such company has complied with any reasonable laws of such other state or foreign country requiring deposits of money or securities with the government of such other state or foreign country, then and in every such case, the commissioner may forthwith cancel the authority of every insurance company organized under the laws of such other state or foreign country and licensed to do business in this state, and may refuse a certificate of authority to every such company thereafter applying to him for authority to do business in this state, until his

certificate shall have been duly recognized by the government of such other state or foreign country. [Acts 1935, ch. 162, § 259, p. 588; 1937, ch. 288, § 5, p. 1317.]

Notre Dame Law Review. Insurance Retaliatory Laws, 39 Notre Dame L. 243.

Opinions of Attorney General. New York insurance company writing compensation insurance in Indiana must file bonds, notwith-

standing provision of New York law that such bonds will not be required of carriers making payments to stock or mutual funds, there being no provision in Indiana law for the establishment of such funds. 1939, p. 44.

NOTES TO DECISIONS

ANALYSIS

In general.
Constitutionality.
Construction.

In General.

A tax law of another state which required the payment of net premiums to the fire departments of cities and incorporated villages by fire insurance companies not organized under the laws of that state, but doing business therein, was not applicable, since premiums derived from insurance on farm property and on property in towns and villages which had no fire companies were not taxed. State ex rel. O'Brien v. Continental Ins. Co., 67 Ind. App. 536, 116 N.E. 929 (1917).

Constitutionality.

Retaliatory law of 1877 (Acts 1877, ch. 43, p. 65) was constitutional and enforceable. State ex rel. Baldwin v. Insurance Co. of N. Am., 115 Ind. 257, 17 N.E. 574 (1888);

Blackmer v. Royal Ins. Co., 115 Ind. 291, 17 N.E. 580 (1888).

Acts 1891, ch. 192, p. 415, requiring foreign insurance companies doing business in this state to pay certain sums into the county treasury in certain counties, for the purpose of creating a firemen's pension fund, was held unconstitutional. Henderson v. London & Lancashire Ins. Co., 135 Ind. 23, 34 N.E. 565, 20 L.R.A. 827, 41 Am. St. R. 410 (1893).

Construction.

Retaliatory statute (Acts 1877, ch. 43, § 3, p. 65), being penal in nature, was strictly construed. State ex rel. O'Brien v. Continental Ins. Co., 67 Ind. App. 536, 116 N.E. 929 (1917).

Acts 1877, ch. 43, § 3, p. 65, being penal in character and involving the comity of states, was strictly construed, even though such construction rendered it ineffective as a retaliatory measure. State v. American Ins. Co., 79 Ind. App. 88, 137 N.E. 338 (1922).

27-1-20-13. Fees. — The fees payable to the secretary of the state by insurance companies which are organized or reorganized under the laws of this state or the laws of any other state, territory or insular possession of the United States or the District of Columbia shall be the same as the fees prescribed in chapter 219 of the Acts of the General Assembly of 1929. [Acts 1935, ch. 162, § 262, p. 588.]

Cross References. Fees and charges of insurance department against companies, IC 27-1-3-15.

Fees payable by all domestic corporations to secretary of state, IC 23-1-18-3.

Organization of domestic insurance companies, IC 27-1-6.

27-1-20-14. Pension plan or system. — Any insurance company organized under the laws of this state, in addition to the rights and powers conferred upon it by the law under which it was organized and/or under which it operates, shall have the power to establish a pension plan or system for the benefit of its officers and employees. Before such a plan or system is adopted by a company, it shall be submitted to and approved by the commissioner of insurance. [Acts 1935, ch. 162, § 262a, p. 588.]

27-1-20-15. Completion of organization. — If any company, whether organized under the provisions of this article or of any statute enacted prior to March 8, 1935, for the purpose of making any kind or kinds of insurance, does not complete its organization and proceed with the transaction of business, pursuant to the provisions of the statute under which it is organized, within a period of one (1) year after its articles of incorporation or its organization shall have been approved and filed in the office of the secretary of state, the approval so given shall be deemed to be revoked and such articles of incorporation or such organization shall be null and void. [Acts 1935, ch. 162, § 264, p. 588; P.L.252-1985, § 92.]

27-1-20-16 — 27-1-20-18. [Repealed.]

Compiler's Notes. These sections, legalizing certain companies organized prior to March 8, 1935, prohibiting political contributions by insurance companies, and prohibiting defamation of companies, were repealed by P.L.1-1989, § 75, § 2728 of Acts 1978, P.L.

2, and Acts 1976, P.L.122, § 1. For present provisions concerning impairment of rights of another, see IC 35-43-1-2; for provisions concerning libel in newspapers, see IC 34-4-15-1 and IC 34-4-15-2.

27-1-20-19. Deceptive statements. — No company doing business in this state or agent thereof shall state or represent by advertisement in any newspaper, periodical or magazine or by any sign, circular, card, policy of insurance or certificate of renewal thereof or otherwise that any funds or assets are in possession of such company which are not actually owned by it and available for the payment of losses and claims and held for the protection of its policyholders and creditors. Funds deposited by any company, under depository laws of this or other states, shall be considered as in the company's possession for the payment of losses or policy claims. [Acts 1935, ch. 162, § 267, p. 588.]

27-1-20-20. Contents of advertisements. — Except as otherwise provided in this section, every advertisement or public announcement and every sign, circular or card issued or displayed by any domestic, foreign or alien company doing business in this state, purporting to make known its financial condition, shall state the amount of its paid-up capital, the assets owned, its liabilities, including therein the premium and loss reserves required by law, and the amount of net surplus of admitted assets over all its liabilities actually available for the payment of its losses and claims and held for the protection of its policyholders and shall correspond to the next preceding verified statement made to the department by such company. The foregoing shall not apply to a statement showing only the capital stock paid up and the surplus separately and combined, but such items shall not be in excess of the corresponding items shown on the verified statements made by such company to the department next preceding the making or issuing of the same. Every advertisement or public announcement and every sign, circular or card issued or displayed by an alien company doing business in this state, purporting to make known its financial condition, shall segregate and state separately the capital and assets held by its United States branch,

the liabilities, including therein the premium and loss reserves required by law, and the amount of net surplus of assets over all its liabilities actually available for the payment of its losses and claims and held for the protection of its policyholders in the United States and shall correspond to the next preceding verified annual statement made by such company to the commissioner.

Despite any other provision of the laws of this state an insurer may, subject to requirements set forth by regulation promulgated by the Commissioner, publish financial statements or information based on financial statements prepared on a basis which is in accordance with requirements of a competent authority and which differs from the basis of the statements which have been filed with the Insurance Commissioner. Such differing financial statements or information based on financial statements shall not be made the basis for the application of provisions of any laws of this state not relating solely to the publication of financial information unless such provisions specifically so require.

For every willful violation of this section and section 19 [IC 27-1-20-19] of this chapter by any such company or by an agent thereof the company shall forfeit for the first offense to the state of Indiana the sum of five hundred dollars (\$500) and for every subsequent offense the sum of one thousand dollars (\$1,000), which, when recovered, shall be paid to the state treasurer. [Acts 1935, ch. 162, § 268, p. 588; 1974, P.L. 123, § 1.]

Cross References. Annual statement forms, IC 27-1-3-13.

27-1-20-21. Annual statement. — Every company doing business in this state shall file with the department on or before March 1 in each year a financial statement for the year ending December 31 immediately preceding in a format in accordance with IC 27-1-3-13. For good and sufficient cause shown, the commissioner may grant to any individual company a reasonable extension of time not to exceed ninety (90) days within which such statement may be filed. Such statement shall be verified by the oaths of the president or a vice president and the secretary or an assistant secretary of the company. The statement of an alien company shall segregate and state separately its condition and transaction in the United States and such segregated and separated statement shall be verified by the oath of its resident manager or principal representative in the United States. The commissioner of insurance may, with the approval of the commission on public records, authorize the destruction of such annual statements which have been on file for two (2) years or more and microfilm copies of which have been made and filed. [Acts 1935, ch. 162, § 269, p. 588; 1957, ch. 124, § 1; P.L.252-1985, § 94; P.L.159-1986, § 4; P.L.271-1987, § 3; P.L.3-1989, § 151; P.L.246-1989, § 1; P.L.116-1994, § 36; P.L.130-1994, § 26; P.L.1-1998, § 140; P.L.268-1999, § 8.]

Cross References. Commissioner may furnish forms for annual statements, IC 27-1-3-13.

27-1-20-21.1. [Repealed.]

Compiler's Notes. This section, concerning the penalty for failure to file an annual statement, and an additional statement certifying loss and loss adjustment reserves, was

repealed by P.L.1-1990, § 257, effective March 20, 1990. For present similar provisions, see IC 27-1-20-21.2 and IC 27-1-20-21.3.

27-1-20-21.2. Penalty for failure to file annual statement. — The commissioner may impose a civil penalty of five hundred dollars (\$500) under IC 4-21.5-3 on an insurance company that fails to comply with section 21 [IC 27-1-20-21] of this chapter. [P.L.1-1990, § 258.]

27-1-20-21.3. Addition to statement required under IC 27-1-20-21. — (a) Every domestic casualty insurance company, domestic fire and marine insurance company, and domestic life and health insurance company shall include an actuarial opinion as an additional part of the financial statement required under section 21(a) [IC 27-1-20-21(a)] of this chapter. The commissioner shall adopt rules under IC 4-22-2 that:

- (1) Prescribe the form and content of the actuarial opinion required by this section; and
- (2) Establish minimum qualifications that an actuary must meet in order to provide the actuarial opinion required under this section.

(b) The actuarial opinion required by subsection (a) shall be included with every annual statement beginning with the statement for calendar year 1994. [P.L.1-1990, § 259; P.L.116-1994, § 37; P.L.130-1994, § 27.]

Compiler's Notes. Although this section is not amended by P.L.268-1999, P.L.268-1999, § 22, effective July 1, 1999, provides: "(a) IC 27-1-3-15, IC 27-1-3-28, IC 27-1-15.5-4, IC 27-1-17-4, IC 27-1-20-21.3, IC 27-1-27-5, IC 27-6-6-4, IC 27-7-2-24, IC 27-8-1-13, IC 27-8-

3-19, IC 27-8-3-20, and IC 27-11-9-1, all as amended by this act, apply upon receipt by the commissioner of the department of insurance of the designation from the insurer of an agent for service of process.

"(b) This SECTION expires June 30, 2004."

27-1-20-22. Verified accounts, reports or other papers. — Whenever any provision of this article requires that there shall be filed any verified account, report, or other paper by any person, firm, or corporation, such account, report, or other paper shall be executed by the person or persons filing such account, report, or other paper or by the president or such other officer as may be designated by the board of directors of any corporation filing such account, report, or other paper, and the truth of the matters therein stated shall be sworn to under oath by such person or by such president or other officer, before a notary public or other officer duly qualified to administer oaths. [Acts 1935, ch. 162, § 270, p. 588; P.L.252-1985, § 95.]

27-1-20-23. Actions prohibited. — No order, judgment, or decree providing for an accounting or enjoining, restraining, or interfering with the operation of the business of any insurance company, association, or society, to which any provision of this article is applicable, or for the appointment of a temporary or permanent receiver thereof, shall be made or granted otherwise than upon the application of the department, except in an action

by a judgment creditor or in proceedings supplemental to execution. [Acts 1935, ch. 162, § 270a, p. 588; P.L.252-1985, § 96.]

NOTES TO DECISIONS

ANALYSIS

In general.
Jurisdiction.
Suit by minority stockholder.

In General.

One who held judgment for personal injuries which had been returned unsatisfied was not judgment creditor of insurer of judgment debtor and could not bring supplemental proceedings against insurer until judgment was recovered against it. Consequently, under statute prohibiting appointment of receiver of insurance company except by application of department of insurance or judgment creditor, superior court had no jurisdiction to appoint receiver for insurer. *State ex rel. Mid-West Ins. Co. v. Superior Court*, 231 Ind. 94, 106 N.E.2d 924 (1952).

A judgment creditor may maintain an action for appointment of a receiver for an insurance company. *State ex rel. Mid-West Ins. Co. v. Niblack*, 235 Ind. 616, 137 N.E.2d 34 (1956).

An agency which does not make insurance but merely acts as agent, broker or representative for the solicitation of insurance business is not an insurance company, association or society within the statute prohibiting granting of an order, judgment or decree providing for the accounting by or interfering with the operation of any such company. *State ex rel. Meade v. Marion Superior Court*, 242 Ind. 22, 174 N.E.2d 408 (1961).

Where the relator in its brief admitted that it did not make insurance and therefore was not an insurance company, the derivative suit by shareholders for a receiver and production of records did not constitute an interference with the business of an insurance company. *State ex rel. Meade v. Marion Superior Court*, 242 Ind. 22, 174 N.E.2d 408 (1961).

Jurisdiction.

Where defendant made out a prima facie case of error in the order of the lower court in the appointment of a receiver without notice, and the appellee failed to file a brief in support of the order appealed from, the Supreme Court would be justified in sustaining appellant's claim that the lower court was without jurisdiction to make the order. *Hoosier Nat'l Life Ins. Co. v. Gary Elec. Co.*, 214 Ind. 597, 17 N.E.2d 85 (1938).

Suit by Minority Stockholder.

A minority stockholder of an insurance company is barred by this section from maintaining suit against the company, alleging fraud, to force the company to produce records, make restrictions and in effect go into receivership, since such action clearly would interfere with the operation of the business of the insurance company and under this section could only be initiated by the state department of insurance. *State ex rel. Great Fid. Life Ins. Co. v. Circuit Court*, 259 Ind. 441, 23 Ind. Dec. 168, 288 N.E.2d 143 (1972).

27-1-20-24. [Repealed.]

Compiler's Notes. This section, providing a general penalty for violation of the Indiana Insurance Law, was repealed by § 2728 of

Acts 1978, P.L. 2. For the present general penalty provision, see IC 27-1-2-4.

27-1-20-25. Lloyds or assessment plan prohibited — Requirements for reciprocal plan, interinsurer or individual underwriter. — (a) A domestic company that organized after March 7, 1935, may not operate:

- (1) An insurance business on the assessment plan; or
- (2) An insurance business as Lloyds.

(b) A domestic company may not operate an insurance business on the reciprocal plan as an interinsurer or individual underwriter unless it has a surplus over all policy liabilities of not less than two hundred fifty thousand dollars (\$250,000). [Acts 1935, ch. 162, § 272, p. 588; 1977, P.L. 282, § 4.]

Compiler's Notes. Section 5 of Acts 1977, P.L. 287 provided that any company obtaining

a permit prior to July 1, 1977 to complete organization is exempt from the requirements

of the 1977 amendment to this section.

Cross References. Lloyds insurance, IC 27-7-1.

Reciprocal or interinsurance contracts, IC 27-6-6.

Opinions of Attorney General. This section does not prevent the formation in the

future of reciprocal or interinsurance exchanges but does impose certain surplus requirements. 1948, No. 36, p. 212.

The laymen of the Church of God may reincorporate to do insurance business on the assessment plan. 1956, No. 36, p. 162.

27-1-20-26. Farmers' mutuals excepted. — The provisions of this article shall not apply to any farmers' mutual hail insurance company, farmers' mutual fire insurance company, or farmers' mutual windstorm insurance company, or any similar company organized and operating under IC 27-5, nor to any mutual fire insurance company confining its business to the town or city in which its home office is located, nor shall any provision of this article be construed as repealing any provision of the statutes applicable to the companies and associations referred to in this section. [Acts 1935, ch. 162, § 272a, p. 588; P.L.252-1985, § 97.]

Cross References. Fire insurance, farmers' mutuals, IC 27-5-10-1.

27-1-20-27. Mutual fire companies to insure farm property excepted. — The provisions of IC 27-1-5 through IC 27-1-19 and this chapter shall not apply to any domestic mutual fire insurance company or association licensed as of March 8, 1935, originally organized and operated by farmers to insure farm property. [Acts 1935, ch. 162, § 272b, p. 588; P.L.252-1985, § 98.]

Cross References. Fire insurance, farmers' mutuals, IC 27-5-10-1.

27-1-20-28. Worker's compensation insurance excepted. — The provisions of this article shall not apply to any interinsurance association or reciprocal or interinsurance exchange organized under and by virtue of Acts 1915, c.106, as amended and supplemented, and formed and operating on or before January 1, 1991, for the sole purpose of writing worker's compensation insurance. [Acts 1935, ch. 162, § 272c, p. 588; P.L.252-1985, § 99; P.L.28-1988, § 78; P.L.170-1991, § 26.]

Cross References. Worker's compensation insurance, IC 22-3-2-5, IC 22-3-5-1 — IC 22-3-5-5, IC 22-3-7-34, IC 27-7-2.

27-1-20-29. Abstract and title guaranty companies previously organized excepted. — Nothing contained in this article shall be construed to affect or apply to any corporation organized before March 8, 1935, under any law of this state which is authorized to engage in the making of abstracts of title to real estate and the issuing of certificates insuring or guaranteeing the titles to real estate. [Acts 1935, ch. 162, § 272d, p. 588; P.L.252-1985, § 100.]

Cross References. Abstract and title insurance, IC 27-7-3.

27-1-20-30. Rebates. — (a) No company acting through its officers or members, attorney-in-fact, or by any other party, no officer of a company acting on his own behalf and no insurance agent, broker, or solicitor, personally or by any other party, shall offer, promise, allow, give, set off or pay, directly or indirectly, any rebate of or part of the premium payable on a policy, or any agent's commission thereon, or earnings, profits, dividends or other benefits founded, arising, accruing, or to accrue thereon or therefrom, or any special advantage in date of policy or age of issue, or any paid employment or contract for services of any kind, or any other valuable consideration or inducement, to or for insurance on any risk in this state, now or hereafter to be written, or for or upon any renewal of any such insurance, which is not specified in the policy contract of insurance, or offer, promise, give, option, sell or purchase any stocks, bonds, securities, or property, or any dividends or profits accruing or to accrue thereon, or other thing of value whatsoever as inducement to insurance or in connection therewith, or any renewal thereof, which is not specified in the policy. Nothing in this section shall prevent a company which transacts industrial life insurance on a weekly payment plan from returning to policyholders who have made a premium payment for a period of at least one (1) year directly to the company at its home or district office a percentage of premium which the company would otherwise have paid for the weekly collection of such premium, nor shall this section be construed to prevent the taking of a bona fide obligation, with legal interest, in payment of any premium.

(b) No insured person or party or applicant for insurance shall directly or indirectly, receive or accept, or agree to receive or accept, any rebate of premium or of any part thereof, or all or any part of any agent's or broker's commission thereon, or any favor or advantage, or share in any benefit to accrue under any policy of insurance, or any valuable consideration or inducement, other than such as are specified in the policy. [Acts 1935, ch. 162, § 273, p. 588; 1978, P.L. 2, § 2713.]

Cross References. Application to farmers' mutual insurance companies, IC 27-5-3.

Rebates prohibited, IC 27-1-22-18.

Opinions of Attorney General. Unless the policy specifies to the contrary an agent is

not permitted under this section to divide his commission with an individual who does not hold a license as agent, solicitor or broker. 1937, p. 74.

NOTES TO DECISIONS

In General.

The mere fact that corporation intended to engage in insurance business although not licensed as an insurance broker was not sufficient to entitle it to injunctive relief against general order of department of financial insti-

tutions with regard to sale of insurance. Until licensed, no property right could be jeopardized. Department of Fin. Insts. v. Johnson Chevrolet Co., 228 Ind. 397, 92 N.E.2d 714 (1950).

Collateral References. Insurance anti-rebate statutes: validity and construction. 90 A.L.R.4th 213.

27-1-20-31. Interlocking directorates. — Insurance corporations may have interlocking directorates, provided no person at the same time shall be a director in two (2) or more insurance corporations where the effect may be to substantially lessen competition generally or tend to create a monopoly. Whenever the commissioner of insurance has reason to believe that there is a violation of this section, he shall have the authority to proceed to an adjudication of the violation under IC 4-21.5-3. [Acts 1935, ch. 162, § 273a, as added by Acts 1949, ch. 90, § 1; P.L.252-1985, § 101; P.L.7-1987, § 139.]

27-1-20-32. Captions not to affect interpretation. — No caption of any section or set of sections of Acts 1935, c.162 shall in any way affect the interpretation of this article or any provision of this article. [Acts 1935, ch. 162, § 275, p. 588; P.L.252-1985, § 102.]

27-1-20-33. Filing of annual statement and quarterly statements with National Association of Insurance Commissioners. — (a) As used in this section, “insurer” refers to each:

- (1) domestic company;
- (2) foreign company; and
- (3) alien company;

that is authorized to transact business in Indiana.

(b) As used in this section, “NAIC” means the National Association of Insurance Commissioners.

(c) On or before March 1 of each year, an insurer shall file with the National Association of Insurance Commissioners and with the department a copy of the insurer’s annual statement convention blank and additional filings prescribed by the commissioner for the preceding year. An insurer shall also file quarterly statements with the NAIC and with the department on or before May 15, August 15, and November 15 of each year in a form prescribed by the commissioner. The information filed with the NAIC under this subsection:

- (1) must be:
 - (A) in the same format; and
 - (B) of the same scope;

as is required by the commissioner under section 21 [IC 27-1-20-21] of this chapter;

- (2) to the extent required by the NAIC, must include the signed jurat page and the actuarial certification; and

- (3) must be filed electronically in accordance with NAIC electronic filing specifications.

The commissioner may grant an exemption from the requirement of subdivision (3) to domestic companies that operate only in Indiana. If an insurer files any amendment or addendum to an insurer’s annual statement convention blank or quarterly statement with the commissioner, the insurer shall also file a copy of the amendment or addendum with the NAIC. Annual and quarterly financial statements are deemed filed with the NAIC when delivered to the address designated by the NAIC for the filings regardless of whether the filing is accompanied by any applicable fee.

(d) The commissioner may, for good cause, grant an insurer an extension of time for the filing required by subsection (c).

(e) A foreign company that:

(1) is domiciled in a state that has a law substantially similar to subsection (c); and

(2) complies with that law;

shall be considered to be in compliance with this section.

(f) In the absence of actual malice:

(1) members of the NAIC;

(2) duly authorized committees, subcommittees, and task forces of members of the NAIC;

(3) delegates of members of the NAIC;

(4) employees of the NAIC; and

(5) other persons responsible for collecting, reviewing, analyzing, and disseminating information developed from the filing of annual statement convention blanks under this section;

shall be considered to be acting as agents of the commissioner under the authority of this section and are not subject to civil liability for libel, slander, or any other cause of action by virtue of the collection, review, analysis, or dissemination of the data and information collected from the filings required by this section.

(g) The commissioner may suspend, revoke, or refuse to renew the certificate of authority of an insurer that fails to file the insurer's annual statement convention blank or quarterly statements with the NAIC or with the department within the time allowed by subsection (c) or (d). [P.L.121-1992, § 3; P.L.251-1995, § 16; P.L.91-1998, § 7; P.L.268-1999, § 9.]

27-1-20-34. Rating required for insurer of exempt commercial policyholder. — An insurance company that insures a public entity as an exempt commercial policyholder (as defined in IC 27-1-22-2.5) must maintain at least an:

(1) "A" rating by A.M. Best; or

(2) equivalent rating by another independent insurance rating organization. [P.L.268-1999, § 10.]

CHAPTER 21

LIMITATIONS ON INVESTMENTS

SECTION.

27-1-21-1. Limitations and reservations.

27-1-21-1. Limitations and reservations. — IC 27-1-12-2, IC 27-1-12-3, IC 27-1-12-11, and IC 27-1-20-8 in their operation shall be subject to the following limitations and reservations:

(a) The validity for deposit and investment purposes of investments made before March 6, 1945, pursuant to the deposit investment requirements of s.147, s.148, s.149, or s.155 of Acts 1935, c.162 or which qualified for deposit under any of those sections prior to March 6, 1945, shall not be affected by the amendments made by Acts 1945, c.175.

(b) Investments made before March 6, 1945, not pursuant to the deposit investment requirements of s.147, s.148, s.149, or s.155 of Acts 1935, c.162 which did not qualify for deposit under any of these sections prior to March 6, 1945, shall be considered within the embrace of investments made under paragraph 20 of IC 27-1-12-2(b) and shall be subject to all the provisions applicable thereto.

(c) Investments described in subdivision (b) and those made pursuant to paragraph 20 of IC 27-1-12-2(b) may, provided the life insurance company so elects in a writing filed with the department, be transferred to any other appropriate paragraph of IC 27-1-12-2(b) under which they would have qualified if purchased at the date of such transfer. [Acts 1945, ch. 175, § 6, p. 420; P.L.252-1985, § 103; P.L.186-1997, § 8.]

Cross References. Deposit of securities, agreement with insurance department to deposit in bank, trust company or safety deposit company, IC 27-1-20-8.

Investments, life companies, IC 27-1-12-2 — IC 27-1-12-4, IC 27-1-12-11.

CHAPTER 22

REGULATION OF INSURANCE RATES

SECTION.

- 27-1-22-1. Purpose and interpretation of chapter.
- 27-1-22-2. Applicability of chapter — Forms of casualty insurance included — Exceptions.
- 27-1-22-2.5. "Exempt commercial policyholder" defined — "Risk Manager" defined.
- 27-1-22-3. Provisions governing rate making.
- 27-1-22-3.1. Reduction in premium charges for motor vehicle insurance for certain persons over 55.
- 27-1-22-4. Filings required by insurers or licensed rating organizations — Exceptions.
- 27-1-22-5. Noncompliance or violation of filing provisions — Hearing — Standard — Appeal.
- 27-1-22-6. Bad-faith filing — Definition — Burden of proof — Orders.
- 27-1-22-7. Filing or deviation — Waiting period — Hearing — Orders.
- 27-1-22-8. Rating organizations — License — Subscribers — Rules and regulations — Review by commissioner.
- 27-1-22-9. Filing a deviation — Termination — Open to public inspection.
- 27-1-22-10. Concerted action authorized.
- 27-1-22-11. Appeals to commissioner — Changes of rates — Failure to make rates — Hearing — Findings — Order.
- 27-1-22-12. Insured authorized to request review of filing as applied to him.

SECTION.

- 27-1-22-13. Advisory organizations — Compliance with section — Violation.
- 27-1-22-14. Joint underwriters or reinsurers — Hearing — Orders.
- 27-1-22-15. Examinations of rating and other organizations — Exhibits — Costs — Reports from other states in lieu of examination.
- 27-1-22-16. Commissioner to approve rules and statistical plans — Interchange of data — Exchange of information and consultation — Rules and regulations to effect purpose of section.
- 27-1-22-17. Knowingly withholding or giving false information.
- 27-1-22-18. Special advantage or inducement not specified in policy prohibited — Exception.
- 27-1-22-19. Freedom of contract with reference to amount of commission unabridged.
- 27-1-22-20. Equitable apportionment of special risks.
- 27-1-22-21. [Repealed.]
- 27-1-22-22. Actuaries, deputies, examiners and assistants.
- 27-1-22-23. Inapplicability of IC 4-22-2.
- 27-1-22-24. Suspension of license — Notice of hearing — Penalty for violation of chapter.
- 27-1-22-25. Premium rates for individual who files voluntary bankruptcy petition.

SECTION.

27-1-22-26. Premium rates for individuals in armed forces or having recently served in armed forces.

SECTION.

27-1-22-27. Premium rates for prior-uninsured motorists.

27-1-22-1. Purpose and interpretation of chapter. — The purpose of this chapter is to promote the public welfare by empowering the commissioner of insurance to regulate insurance rates to the end that they shall not be excessive, inadequate, or unfairly discriminatory, and to encourage reasonable competition among insurance companies (referred to in this chapter as insurers) and to permit and regulate, but not require, cooperative action among insurers as to rates, rating systems, rating plans and practices, and other matters within the scope of this chapter. This chapter shall be liberally interpreted to carry into effect the provisions of this section. [Acts 1967, ch. 133, § 1; P.L.252-1985, § 104.]

Cross References. Application to farmers' mutual insurance companies, IC 27-5-3-3.

Rating bureaus, governing bodies, IC 27-1-13-10 — IC 27-1-13-12.

Worker's compensation rating bureaus, IC 27-7-2.

Indiana Law Review. A Study of Medical Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

Cited: *Vernon Fire & Cas. Ins. Co. v. Sharp*, 264 Ind. 599, 53 Ind. Dec. 44, 349 N.E.2d 173 (1976).

NOTES TO DECISIONS

In General.

State-made insurance rates are valid where the rates are not clearly confiscatory and repugnant to the Fourteenth Amendment to the federal Constitution. *Aetna Ins. Co. v. Hyde*, 275 U.S. 440, 48 S. Ct. 174, 72 L. Ed. 357 (1928).

Companies could file and charge a lower rate than that prescribed by the bureau, but they could not change the classification or the method of classifying insurance risks. *Department of Ins. v. Merchants Fire Ins. Co.*, 222 Ind. 611, 57 N.E.2d 62 (1944).

Where a participating term fire insurance policy provided for premiums to be paid in

equal annual instalments and that a policy holder who renewed his policy at the beginning of the second year by paying the premium received his first year's dividend, but if there was no renewal by payment of the second year's premium, the policy was canceled and the policyholder did not receive the dividend, such policy was not discriminatory and was not an unlawful deviation from the rates and regulations prescribed by the insurance rating bureau of which the company was a member pursuant to this statute. *Department of Ins. v. Merchants Fire Ins. Co.*, 222 Ind. 611, 57 N.E.2d 62 (1944).

Collateral References. 43 Am. Jur. 2d Insurance § 30.

44 C.J.S. Insurance § 31 et seq.

27-1-22-2. Applicability of chapter — Forms of casualty insurance included — Exceptions. — (a) This chapter applies to all forms of casualty insurance including fidelity, surety, and guaranty bonds, to all forms of motor vehicle insurance, to all forms of fire, marine, and inland marine insurance, and to any and all combinations of the foregoing or parts thereof, on risks or operations in this state, except:

- (1) Reinsurance, other than joint reinsurance to the extent stated in section 14 [IC 27-1-22-14] of this chapter;
- (2) Accident and health insurance;

- (3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;
- (4) Insurance against loss or damage to aircraft or against liability arising out of the ownership, maintenance, or use of aircraft;
- (5) Worker's compensation insurance; and
- (6) Abstract and title insurance.

(b) Inland marine insurance includes insurance defined by statute, or by interpretation of statute, or if not so defined or interpreted, by ruling of the commissioner of insurance (referred to as the commissioner), or as established by general custom of the business, as inland marine insurance.

(c) This chapter shall not apply to farmers' mutual insurance companies organized and operating under IC 27-5 unless and only to the extent that IC 27-5 specifically provides that such companies are subject to:

- (1) This chapter;
- (2) Acts 1947, c.60; or
- (3) Acts 1947, c. 111.

[Acts 1967, ch. 133, § 2; P.L.252-1985, § 105; P.L.28-1988, § 79.]

Cross References. Applicability to farmers mutual insurance companies, IC 27-5-3-3.

27-1-22-2.5. "Exempt commercial policyholder" defined — "Risk Manager" defined. — (a) As used in this chapter, "exempt commercial policyholder" means an entity that:

- (1) makes written certification to the entity's insurer on a form prescribed by the department that the entity is an exempt commercial policyholder;
- (2) has purchased the policy of insurance through an insurance agent licensed under IC 27-1-15.5-3; and
- (3) meets any three (3) of the following criteria:
 - (A) Has a net worth of more than twenty-five million dollars (\$25,000,000) at the time the policy of insurance is issued.
 - (B) Has a net revenue or sales of more than fifty million dollars (\$50,000,000) in the preceding fiscal year.
 - (C) Has more than twenty-five (25) employees per individual company or fifty (50) employees per holding company aggregate at the time the policy of insurance is issued.
 - (D) Has aggregate annual commercial insurance premiums, excluding any worker's compensation and professional liability insurance premiums, of more than seventy-five thousand dollars (\$75,000) in the preceding fiscal year.
 - (E) Is a nonprofit or a public entity with an annual budget of at least twenty-five million dollars (\$25,000,000) or assets of at least twenty-five million dollars (\$25,000,000) in the preceding fiscal year.
 - (F) Procures commercial insurance with the services of a risk manager.

An entity meets the written certification requirement under subdivision (1) if the entity provides a copy of a certification previously submitted under

subdivision (1) and if there has been no significant material change in the entity's status.

(b) As used in this chapter, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager may be:

(1) a full-time employee of an exempt commercial policyholder who is qualified through education and experience or training and experience:
or

(2) a person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder. [P.L.268-1999, § 11.]

27-1-22-3. Provisions governing rate making. — (a) Rates shall be made in accordance with the following provisions:

(1) Due consideration shall be given to the past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends or savings allowed or returned by insurers to their policyholders or members, to past and prospective expenses both countrywide and those specifically applicable to this state, to all other relevant factors, including trend factors, within and outside this state, and in the case of fire insurance rates, to the underwriting experience of the fire insurance business during a period of not less than the most recent five (5) year period for which such experience is available and relevant.

(2) Risks may be grouped by classifications, by rating schedules, or by any other reasonable methods, for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(4) Rates shall not be excessive, inadequate, or unfairly discriminatory. No rate shall be held to be excessive unless such rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable. No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance coverage provided and is insufficient to

sustain projected losses and expenses, or unless such rate is unreasonably low for the insurance coverage provided and the use of such rate has, or if continued, will have, the effect of destroying competition or creating a monopoly.

(b) Except to the extent necessary to meet the provisions of subsection (a)(4), uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(c) For the purpose of making rates upon automobiles and other motor vehicles under the provisions of this chapter, the terms "fleet" or "fleet policy" shall mean an insurance risk of five (5) or more automobiles and other vehicles of any kind, all owned by one (1) insured and all under one (1) direct operating management; Provided, That automobiles and other motor vehicles owned by employees may not be included or insured under a fleet policy of an employer under any circumstances. [Acts 1967, ch. 133, § 3; P.L.252-1985, § 106.]

Notre Dame Law Review. The Elimination of Gender Discrimination in Insurance Pricing: Does Automobile Insurance Rate Without Sex?, 61 Notre Dame L. Rev. 748 (1986).

Collateral References. 43 Am. Jur. 2d Insurance § 30.

44 C.J.S. Insurance § 66 et seq.

27-1-22-3.1. Reduction in premium charges for motor vehicle insurance for certain persons over 55. — (a) As used in this section, "motor vehicle insurance" means any type of insurance described in IC 27-1-5-1, Class 2(f).

(b) A motor vehicle insurance rate filed under section 4 [IC 27-1-22-4] of this chapter may provide for an appropriate reduction in premium charges for a policy if the principal operator of the motor vehicle covered under the policy:

- (1) Is at least fifty-five (55) years of age; and
- (2) Has, within three (3) years before the issuance or renewal of the policy, successfully completed a motor vehicle accident prevention course approved by the bureau of motor vehicles.

(c) A reduction in premium charges need not be provided under this section if the principal operator of the motor vehicle covered under the policy participated in the motor vehicle accident prevention course under the order of a court.

(d) This section does not prevent an insurer from withholding or rescinding the reduction in premium charges for a motor vehicle insurance policy if the principal operator of the motor vehicle covered under the policy is involved in a motor vehicle accident for which the principal operator is at fault. [P.L.121-1989, § 11.]

27-1-22-4. Filings required by insurers or licensed rating organizations — Exceptions. — (a) Every insurer shall file with the commissioner, every manual of classifications, rules, and rates, every rating schedule, every rating plan, and every modification of any of the foregoing which it proposes to use.

(b) The following types of insurance are exempt from the requirements of subsections (a) and (j):

(1) Inland marine risks, which by general custom of the business are not written according to manual rates or rating plans.

(2) Insurance, other than workers compensation insurance or professional liability insurance, issued to exempt commercial policyholders.

(c) Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the information upon which the filer supports such filing.

(d) The information furnished in support of a filing may include:

(1) the experience and judgment of the insurer or rating organization making the filing;

(2) its interpretation of any statistical data it relies upon;

(3) the experience of other insurers or rating organizations; or

(4) any other relevant factors.

The commissioner shall have the right to request any additional relevant information. A filing and any supporting information shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

(e) Filings shall become effective upon the date of filing by delivery or upon date of mailing by registered mail to the commissioner, or on a later date specified in the filing.

(f) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(g) Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf, provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the commissioner to accept such filings on its behalf.

(h) Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the commissioner to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership, provided:

(1) that any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the commissioner and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

(2) that any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the commissioner:

(A) requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and

requiring the rating organization, within thirty (30) days after receipt of such request, either:

- (i) to make such filing as a rating organization filing;
- (ii) to make such filing on an agency basis solely on behalf of the requesting member; or

(iii) to decline the request of such member; and

(B) excluding from membership any insurer which elects to make any filing wholly independently of the rating organization.

(i) Under such rules as he shall adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kinds of insurance, or subdivision, or classes of risk, or parts or combinations of any of the foregoing, the rates for which can not practicably be filed before they are used. Such orders and rules shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order are excessive, inadequate, or unfairly discriminatory.

(j) Upon the written application of the insured, stating his reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(k) An insurer shall not make or issue a policy or contract except in accordance with filings which are in effect for that insurer or in accordance with the provisions of this chapter. Subject to the provisions of section 6 [IC 27-1-22-6] of this chapter, any rates, rating plans, rules, classifications, or systems in effect on May 31, 1967, shall be continued in effect until withdrawn by the insurer or rating organization which filed them.

(l) The commissioner shall have the right to make an investigation and to examine the pertinent files and records of any insurer, insurance agent, or insured in order to ascertain compliance with any filing for rate or coverage which is in effect. He shall have the right to set up procedures necessary to eliminate noncompliance, whether on an individual policy, or because of a system of applying charges or discounts which results in failure to comply with such filing.

(m) The department may adopt rules to:

- (1) implement the exemption under subsection (b);
- (2) impose disclosure requirements the commissioner determines are necessary to adequately protect exempt commercial policyholders; and
- (3) establish the form of the report required by subsection (n).

(n) Each insurer who issues insurance to an exempt commercial policyholder shall file an annual report with the department by February 1 of each year. The annual report may not disclose the identity of an exempt commercial policyholder and must include only the following information regarding each exempt commercial policyholder:

- (1) The account number, policy number, or other number used by the insurer to identify the insured.
- (2) The amount of aggregate annual commercial premium.
- (3) The inception date and expiration date of commercial insurance coverage provided by the insurer.
- (4) The criteria in section 2.5(a)(3) [IC 27-1-22-2.5(a)(3)] of this chapter used to establish the entity as an exempt commercial policyholder.

(o) The annual report filed under subsection (n) must be accompanied by the fee prescribed by IC 27-1-3-15(e). For purposes of calculating the required fee, each policy purchased by an exempt commercial policyholder shall be considered a product filing under IC 27-1-3-15(e). [Acts 1967, ch. 133, § 4; P.L.252-1985, § 107; P.L.268-1999, § 12.]

27-1-22-5. Noncompliance or violation of filing provisions — Hearing — Standard — Appeal. — (a) Upon his own motion, or upon written request by any insured affected thereby or by any licensed insurance agent or broker, if such request is made in good faith and states reasonable grounds, the commissioner, if he shall have reason to believe that any filing is not in compliance with the applicable provisions of section 3 [IC 27-1-22-3] of this chapter, or in the case of an alleged violation of section 6 [IC 27-1-22-6] of the chapter if he finds on the basis of the information on file with the department that there has been a prima facie showing of a violation of that section, shall hold a hearing upon not less than ten (10) days written notice to the rating organization or insurer which made the filing in issue, specifying the items and matters to be considered and stating in what manner and to what extent noncompliance is alleged to exist. No other matter or subject shall be considered at such hearing. Only the rating organization or insurer which made such filing and the commissioner may be parties to any hearing or to any judicial appeal resulting therefrom. Within a reasonable time, the commissioner shall notify every person making request as to his decision as to the validity of the request and subsequently shall notify every such person of any action which may thereafter be taken with reference to such request.

(b) If, after such hearing, the commissioner finds, based upon a preponderance of the evidence adduced at such hearing and made a part of the record thereof, that such filing is not in compliance with the provisions of section 3 of this chapter, he shall immediately issue a written order to the parties specifying in detail in what respects and upon what evidence such noncompliance exists and stating when, within a reasonable period thereafter, such filing shall be deemed no longer effective. Said order shall not affect any contract policy made or issued prior to the expiration of the period set forth in said order.

(c) If after such hearing the commissioner finds that such filing does not violate the provisions of section 3 of this chapter, he shall immediately issue a written order to the parties dismissing the proceedings.

(d) The finding and order of the commissioner shall be made within ninety (90) days after the close of such hearing or within such reasonable time extensions as may be fixed by the commissioner.

(e) No manual of classifications, rule, rate, rating schedule, rating plan, or any modification of any of the foregoing which establishes standards for measuring variations in hazards or expense provisions, or both, which has been filed pursuant to section 4 [IC 27-1-22-4] of this chapter shall be disapproved if the rates produced thereby meet the requirements of section 3 of this chapter.

(f) All actions of the commissioner under this chapter and all appeals from his action shall be governed by IC 4-21.5, except where a different

specific provision is made in this chapter. [Acts 1967, ch. 133, § 5; 1971, P.L. 1, § 9; P.L.252-1985, § 108; P.L.7-1987, § 140.]

Indiana Law Journal. Judicial Control of Administrative Agencies in Indiana, 28 Ind. L.J. 1.

27-1-22-6. Bad-faith filing — Definition — Burden of proof — Orders. — (a) A “bad-faith filing,” as used in this chapter, means a rate filing made by any filer who, in bad faith, files a rate which it knows, or should know, is grossly inadequate for the insurance coverage provided, and which is filed and used for the purpose of unfairly obtaining a particular risk or limited group of risks, and which is available only to such risk or limited group of risks.

(b) At any hearing conducted under this section, the burden shall be on the filer to prove that such filing is not in violation of this section. If, after such hearing, the commissioner finds that the filer has failed to prove that such filing is not in violation of this section, based on the evidence adduced at the hearing and made a part of the record, he may order all policies written under such bad-faith filing to be rewritten at an approved rate from the date of the inception of such policies of insurance, or all such policies shall be cancelled pro rata in accordance with the policy provisions.

(c) Nothing in this section shall be deemed to supersede the provisions set forth in section 24 [IC 27-1-22-24] of this chapter. [Acts 1967, ch. 133, § 6; P.L.252-1985, § 109.]

27-1-22-7. Filing or deviation — Waiting period — Hearing — Orders. — (a) When a filing or deviation involving a rate adjustment depends upon a change in the relationship between the proposed rates and the anticipated production expense portion thereof from the relationship anticipated under any rates previously filed and currently in effect for the company or rating organization involved, such filing or deviation shall be subject to the provisions of subsection (b).

(b) Each filing or deviation subject to this section shall be on file for a waiting period of twenty (20) days before it becomes effective. If within such waiting period or after hearing as provided in this section, the commissioner finds that the filing or deviation does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made the filing or to the insurer which filed the deviation written notice of disapproval specifying therein in what respects the filing or deviation fails to meet the requirements of this chapter and stating that the same shall not become effective. Such filing or deviation shall be deemed to meet the requirements of this act unless disapproved:

- (1) Within such waiting period; or
- (2) If a hearing has been called and written notice thereof given by the commissioner during such waiting period, then within ten (10) days after the date of commencement of such hearing.

Upon his own motion, or upon timely written request by any agent or broker of the company or companies to which such filing or deviation is applicable,

if such request is in good faith and states reasonable grounds, the commissioner may at any time within the waiting period call a hearing upon not less than ten (10) nor more than fifteen (15) days written notice to the company or rating organization making the filing or to the company filing the deviation. Within ten (10) days after the commencement of such hearing, the commissioner shall in writing either approve such filing or deviation or shall disapprove the same as provided in this section. [Acts 1967, ch. 133, § 7; P.L.252-1985, § 110.]

27-1-22-8. Rating organizations — License — Subscribers — Rules and regulations — Review by commissioner. — (a) A rating organization is an individual, partnership, corporation, limited liability company, or unincorporated association other than an insurer located within or without this state, who or which has as its primary object and purpose the making and filing of rates, rating plans, rating systems, or rules relating thereto, and who or which may also examine policies, daily reports, binders, renewal certificates, endorsements, and other evidences of insurance or the cancellation thereof for any member or subscriber requesting such auditing service.

(b) Such a rating organization shall make application to the commissioner for license as a rating organization for such kinds of insurance, or subdivisions, or classes of risk, or parts or combination of any of the foregoing as are specified in its application and shall file therewith:

- (1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules, and regulations governing the conduct of its business;
- (2) A list of its members and subscribers;
- (3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and
- (4) A statement of its qualifications as a rating organization.

(c) If the commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization, and that its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business conform to the requirements of law, he shall issue a license specifying the kinds of insurance, or subdivisions, or classes of risk, or parts or combinations of any of the foregoing for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty (60) days of the date of its filing with him. Licenses issued pursuant to this section shall remain in effect for three (3) years unless sooner suspended or revoked by the commissioner. The fee for the license is seventy-five dollars (\$75). Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the commissioner promptly of every change in:

(1) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules, and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(d) Subject to rules and regulations which have been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its services for any one (1) or more of the kinds of insurance, subdivisions, or classes of risk or parts or combinations of any of the foregoing for which it is authorized to act as an organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten (10) days written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, he shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty (30) days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, he shall order the rating organization to admit the insurer as a subscriber. If he finds that the action of the rating organization was justified, he shall make an order affirming its action.

(e) No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends or savings allowed or returned by insurers to their policyholders or members.

(f) Cooperation among rating organizations or among rating organizations and insurers in ratemaking or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filing generally. The commissioner may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable, or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice.

(g) Any rating organization may subscribe for or purchase actuarial, technical, or other services, and such services shall be available to all members and subscribers without discrimination.

(h) A member of a rating organization means an insurer entitled to participate in its management and electing to exercise its right to so

participate. [Acts 1967, ch. 133, § 8; P.L.252-1985, § 111; P.L.31-1988, § 14; P.L.8-1993, § 415.]

Cross References. Conviction of felony or misdemeanor, effect on license or certificate holder, IC 25-1-1.1-1.

27-1-22-9. Filing a deviation — Termination — Open to public inspection. — (a) In addition to any rights conferred pursuant to section 4 [IC 27-1-22-4] of this chapter any member or subscriber to a rating organization may file with commissioner a deviation from the rates, rating schedules, rating plans, rating systems, or rules respecting any kind of insurance, division, subdivision, classification, or any part or combination of any of the foregoing.

(b) Such a filing shall specify the nature and extent of the deviation and shall be accompanied by the relevant information upon which the filer supports the deviation. The commissioner shall have the right to request any additional relevant information.

(c) Such deviation shall become effective upon the date of filing by delivery or upon date of mailing by registered mail to the commissioner or on a later date specified in the filing. It shall be in effect until terminated by the filer giving notice to the commissioner of the termination of the deviation. A change in the rates, rating schedules, rating plans, rating systems, or rules to which the deviation applies shall not terminate the deviation without the consent of the insurer to which the deviation applies. Any such deviation may be terminated by the commissioner pursuant to the provisions of section 5 [IC 27-1-22-5] of this chapter and after notice and hearings as provided in section 5 of this chapter.

(d) A deviation filing and supporting information shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner and copies may be had by any person on request and upon the payment of a reasonable charge therefor. [Acts 1967, ch. 133, § 9; P.L.252-1985, § 112.]

27-1-22-10. Concerted action authorized. — Subject to and in compliance with all other provisions of this chapter, two (2) or more insurers may act in concert with each other and with others with respect to any matters within the purview of this chapter and are authorized to act in concert between or among themselves to the same extent as if they constituted a single insurer. [Acts 1967, ch. 133, § 10; P.L.252-1985, § 113.]

27-1-22-11. Appeals to commissioner — Changes of rates — Failure to make rates — Hearing — Findings — Order. — (a) Any subscriber which has authorized a rating organization to making filings on its behalf and any member thereof which does not wish to act under sections 4(g) and 4(h) [IC 27-1-22-4(g) and (h)] of this chapter may appeal to the commissioner from the action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization and the commissioner shall, after a hearing held upon not less

than ten (10) days written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal, or, if such appeal is from the action or decision of the rating organization in rejecting a proposed addition to its filings, he may, in the event he finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings in a manner consistent with his findings within a reasonable time after the issuance of such order.

(b) If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense provisions which differs, in accordance with the right granted in section 3(a)(3) [IC 27-1-22-3(a)(3)] of this chapter from the system of expense provisions included in a filing made by the rating organization, the commissioner shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal the commissioner shall apply the standards set forth in section 3 [IC 27-1-22-3] of this chapter. [Acts 1967, ch. 133, § 11; P.L.252-1985, § 114; P.L.268-1999, § 13.]

27-1-22-12. Insured authorized to request review of filing as applied to him. — Any insured may, in writing, request his insurer or its rating organization to review the manner in which its filing or the filing made by a rating organization on its behalf has been applied with respect to insurance afforded him. Any such insured aggrieved by the failure or refusal of an insurer or rating organization to make such review and to grant appropriate relief within thirty (30) days after such request is received may file a written complaint and request for a hearing with the commissioner, specifying the grounds relied upon. If the complaint charges a violation of this chapter and the commissioner finds that the complaint was made in good faith and that the complainant would be aggrieved if the violation is proven, he shall hold a hearing upon not less than ten (10) days written notice to the complainant, the insurer, and the related rating organization, if any, stating the grounds of complaint. If after such hearing he finds the complaint justified, he shall order the matter complained of to be corrected within a reasonable time, but not less than twenty (20) days after a copy of his written order has been mailed to or served upon the insurer complained against. [Acts 1967, ch. 133, § 12; P.L.252-1985, § 115.]

27-1-22-13. Advisory organizations — Compliance with section — Violation. — (a) Every group, association, or other organization of insurers, whether located within or outside this state, which assists insurers which make their own filings or rating organizations in ratemaking, by the collection and furnishing of loss or expense statistics, or by the submission of recommendations, but which does not make filings under this chapter, shall be known as an advisory organization.

(b) Every advisory organization shall file with the commissioner:

(1) A copy of its constitution, its articles of agreement or association, or its certificate of incorporation and of its bylaws, rules, and regulations governing its activities;

- (2) A list of its members;
- (3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process issued at his direction may be served; and
- (4) An agreement that the commissioner may examine such advisory organization in accordance with the provisions of section 15 [IC 27-1-22-15] of this chapter.

(c) If, after a hearing, the commissioner finds that the furnishing of such information or assistance involves any act or practice which is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respect such act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such act or practice.

(d) No insurer which makes its own filings nor any rating organization shall support its findings by statistics or adopt ratemaking recommendations furnished to it by an advisory organization which has not complied with this section or with an order of the commissioner involving such statistics or recommendations issued under subsection (c). If the commissioner finds such insurer or rating organization to be in violation of this subsection, he may issue an order requiring the discontinuance of the violation. [Acts 1967, ch. 133, § 13; P.L.252-1985, § 116.]

27-1-22-14. Joint underwriters or reinsurers — Hearing — Orders.

— (a) Every group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance shall be subject to regulation with respect thereto as provided in this chapter, subject, however, with respect to joint underwriting, to all other provisions of this chapter and with respect to joint reinsurance, to section 15 [IC 27-1-22-15] of this chapter.

(b) If, after a hearing, the commissioner finds that any activity or practice of any such group, association, or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter and requiring the discontinuance of such activity or practice. [Acts 1967, ch. 133, § 14; P.L.252-1985, § 117.]

27-1-22-15. Examinations of rating and other organizations — Exhibits — Costs — Reports from other states in lieu of examination.

— (a) The commissioner shall, at least once every three (3) years, make or cause to be made an examination of each licensed rating organization, and may, as often as he may deem it expedient, make or cause to be made an examination of each advisory organization and of each group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance pursuant to section 13 [IC 27-1-22-13] of this chapter to ascertain whether such rating or advisory organization or group, association or other organization complies with the applicable provisions of this chapter. In lieu of any such examination the commissioner may accept

the report of an examination made by the insurance supervisory official of another state.

(b) The officers, managers, agents, and employees of any such organization, group or association may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics and information of every kind and character collected or considered by such organization, group or association in the conduct of the operations to which such examination relates.

(c) The reasonable cost of any examination authorized by this chapter shall be paid by the organization, group, or association examined, upon presentation to it of a detailed account of such cost.

(d) No report of examination shall be made public until the organization examined has an opportunity to review the proposed report and to have a hearing with reference thereto, after which hearing the report shall be filed for public inspection and become admissible in evidence as a public record. [Acts 1967, ch. 133, § 15; P.L.252-1985, § 118.]

27-1-22-16. Commissioner to approve rules and statistical plans — Interchange of data — Exchange of information and consultation — Rules and regulations to effect purpose of section. —

a. The commissioner shall approve reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In approving such rules and plans, the commissioner shall give due consideration to the rating systems on file with him and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate rating organizations or other agencies, or both, to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules approved by the commissioner to insurers and advisory and rating organizations.

b. In order to further uniform administration of the regulatory laws, the commissioner and every insurer, rating organization, advisory organization or statistical agency may exchange information and experience data with insurance supervisory officials, insurers, rating organizations, advisory organizations or statistical agencies in this and other states and may consult with them with respect to rate making and the application of rating systems.

c. The commissioner may make reasonable rules and regulations necessary to effect the purposes of this section. [Acts 1967, ch. 133, § 16.]

27-1-22-17. Knowingly withholding or giving false information. —

No person may knowingly withhold information from, or knowingly give false or misleading information to, the commissioner or the department, to any statistical agency designated by the department, to any rating organization, or to any insurer, which will affect the rates or premiums chargeable under this article. [Acts 1967, ch. 133, § 17; 1978, P.L. 2, § 2714.]

27-1-22-18. Special advantage or inducement not specified in policy prohibited — Exception. — No insurer, broker, or agent shall knowingly charge, demand, or receive a premium for any policy of insurance except in accordance with the provisions of this chapter. No insurer or employee thereof, and no broker or agent shall pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in applicable filings. No insured named in any policy of insurance shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of, nor permitting the regulation of the payment of, commissions or other compensation to duly licensed agents and brokers, nor as prohibiting, or permitting the regulation of, any insurer from allowing or returning to its participating policyholders or members, dividends or savings. [Acts 1967, ch. 133, § 18; P.L.252-1985, § 119.]

Cross References. Rebating prohibited, IC 27-1-20-30.

NOTES TO DECISIONS

In General.

Public policy permits the recovery of punitive damages where insurers acted tortiously in dealing with the plaintiff, for when a statutory scheme exists to protect the public,

those who are regulated thereby may not act in an intentional and wrongful manner so as to defeat the statutory objective. *Vernon Fire & Cas. Ins. Co. v. Sharp*, 264 Ind. 599, 53 Ind. Dec. 44, 349 N.E.2d 173 (1976).

Collateral References. Insurance anti-rebate statutes: validity and construction. 90 A.L.R.4th 213.

27-1-22-19. Freedom of contract with reference to amount of commission unabridged. — Nothing in this chapter abridges or restricts the freedom of contract of insurers, agents, or brokers with reference to the amount of commission to be paid to agents or brokers by insurers, and such payments are expressly authorized. [Acts 1967, ch. 133, § 19; P.L.252-1985, § 120.]

27-1-22-20. Equitable apportionment of special risks. — Agreements may be made among insurers with respect to the equitable apportionment among them of automobile, bodily injury liability, and property damage insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the terms of this chapter. [Acts 1967, ch. 133, § 20; P.L.252-1985, § 121.]

27-1-22-21. [Repealed.]

Compiler's Notes. This section, concerning the definitions of "department" and "commissioner," was repealed by P.L.4-1988, § 17, effective July 1, 1988.

27-1-22-22. Actuaries, deputies, examiners and assistants. — (a) For the purpose of maintaining the affirmative, active, and definite administration of the provisions of this chapter, the commissioner, with the approval of the governor, may appoint such additional actuaries, deputies, examiners, assistants, and other employees in the department as may be found necessary to carry out the provisions of this chapter. Except as otherwise provided in this chapter, such additional deputies, examiners, assistants, and employees so appointed shall be chosen for their fitness, either professional or practical, as the nature of the position may require, irrespective of their political beliefs or affiliations. The technical or professional qualifications of any applicant shall be determined by examination, professional rating or otherwise, as the commissioner with the approval of the governor may determine. Subject to the approval of the governor and the state budget director, the salaries of such additional actuaries, deputies, examiners, assistants, and other employees shall be fixed by the commissioner. Any actuary, deputy, examiner, assistant, or employee so employed may be removed at any time by the commissioner.

(b) In the absence of the commissioner, he may, by written order, designate a deputy to conduct any hearing, and, in such case, such deputy commissioner shall possess and may exercise any and all powers of the commissioner with respect to the matter in hearing.

(c) Neither the commissioner nor any actuary, deputy, examiner, assistant, or employee in the department shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter. [Acts 1967, ch. 133, § 22; P.L.252-1985, § 123.]

27-1-22-23. Inapplicability of IC 4-22-2. — No provision of IC 4-22-2 shall be construed to apply to rates or classifications made pursuant to the provisions of this chapter and approved by the commissioner or department. [Acts 1967, ch. 133, § 23; P.L.252-1985, § 124.]

27-1-22-24. Suspension of license — Notice of hearing — Penalty for violation of chapter. — (a) The commissioner may suspend the

license of any rating organization or insurer which fails to comply with an order of the commissioner or department within the time limited by such order, or any extension thereof which the commissioner may grant. The commissioner shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until such order has been affirmed. The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed. No license shall be suspended or revoked except upon a written order of the commissioner, stating his findings, made after a hearing is held upon not less than fifteen (15) days' written notice to the person specifying the alleged violation.

(b) A person who violates this chapter commits a Class A misdemeanor. [Acts 1967, ch. 133, § 24; 1978, P.L. 2, § 2715.]

Cross References. Effect of felony or misdemeanor conviction, IC 25-1-1.1-1.

Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

27-1-22-25. Premium rates for individual who files voluntary bankruptcy petition. — (a) This section only applies to a policyholder or an applicant who is an individual.

(b) As used in this section, "motor vehicle insurance" means any type of insurance described in IC 27-1-5-1, Class 2(f).

(c) A motor vehicle insurance rating plan filed under section 4 [IC 27-1-22-4] of this chapter may not establish a higher rate for a policyholder based on the fact that the policyholder has filed a voluntary petition under the federal bankruptcy law (11 U.S.C. 101 et seq.).

(d) The premium rate for an individual policy of motor vehicle insurance may not be set higher than the applicable rate set forth in the rating plan in effect under this chapter based on the fact that the policyholder or applicant has filed a voluntary petition under the federal bankruptcy law.

(e) The violation of this section is an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4. [P.L.122-1992, § 1.]

27-1-22-26. Premium rates for individuals in armed forces or having recently served in armed forces. — (a) As used in this section, "armed forces" means the following:

- (1) The Army.
- (2) The Navy.
- (3) The Air Force.
- (4) The Marine Corps.
- (5) The Coast Guard.

(b) This section applies only to an individual:

- (1) Who is applying for motor vehicle insurance; and
- (2) Who:

(A) Is serving in one (1) of the armed forces; or

(B) Has served in one (1) of the armed forces within six (6) months before applying for motor vehicle insurance.

(c) As used in this section, “motor vehicle insurance” means any type of insurance described in IC 27-1-5-1, Class 2(f).

(d) As used in this chapter, “rating plan” means the rating schedule or rating plan of an insurer concerning premium rates for motor vehicle insurance that has been filed with the commissioner and is in effect under section 4 [IC 27-1-22-4] of this chapter.

(e) An insurer may not set the premium rate for a policy of motor vehicle insurance for an individual described in subsection (b) at an amount higher than the applicable rate set forth in the rating plan due to the fact that the individual has not been covered by motor vehicle insurance for a period of time.

(f) The violation of this section is an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4. [P.L.223-1993, § 5.]

27-1-22-27. Premium rates for prior-uninsured motorists. —

(a) The purpose of this section is to preclude insurers from charging higher rates for innocent prior-uninsured motorists who have not operated a motor vehicle in violation of any financial responsibility or compulsory insurance requirement within the prior twelve months.

(b) As used in this section, “motor vehicle insurance” means any type of insurance described in IC 27-1-5-1, Class 2(f).

(c) A motor vehicle insurer may not discriminate in establishing a rate for a policyholder or applicant, based solely on the absence of insurance by the applicant or policyholder.

(d) This section does not apply to applicants who first received their driver’s license within the past thirty-six (36) month period.

(e) A violation of this section is an unfair and deceptive act or practice in the business of insurance under IC 27-4-1-4. [P.L.169-1999, § 1.]

CHAPTER 23

INSURANCE HOLDING COMPANY SYSTEM REGULATION

SECTION.

27-1-23-1. Definitions.

27-1-23-1.5. Notice of dividend.

27-1-23-2. Acquisition of domestic insurer —
Filing of documents — Hearings, requisites, procedure, rulings — Exceptions — Service of process.

27-1-23-2.5. Definitions — Applicability of section — Pre-acquisition notification — Waiting period — Order.

27-1-23-3. Insurance holding company registration — Data requirements — Exceptions — Disclaimers.

27-1-23-4. Insurers’ transaction standards — Reasonable surplus standards — Extraordinary distributions prohibited.

SECTION.

27-1-23-5. Examination of insurers’ records — Requisites — Expert advisors — Expenses.

27-1-23-6. Confidentiality of insurers’ records — Exceptions.

27-1-23-7. Rules and regulations.

27-1-23-8. Injunctions — Restrictions on use of insurance securities — Seizure and sequestration of insurance securities — Effect of violations.

27-1-23-9. [Repealed.]

27-1-23-10. Commissioner managing domestic insurer — Requisites.

27-1-23-10.5. Recovery of payments and distributions.

27-1-23-11. Suspension or revocation of insurer’s license — Requisites.

SECTION.

27-1-23-12. Judicial review of commissioner's actions — Stay of actions — Judicial mandate to commissioner.

SECTION.

27-1-23-13. Relationship of this chapter to other Indiana insurance statutes.

27-1-23-1. Definitions. — As used in this chapter, the following terms shall have the respective meanings set forth in this section, unless the context shall otherwise require:

(a) An "acquiring party" is the specific person by whom an acquisition of control of a domestic insurer or of any corporation controlling a domestic insurer is to be effected, and each person who directly, or indirectly through one (1) or more intermediaries, controls the person specified.

(b) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(c) A "beneficial owner" of a voting security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, revocable or irrevocable proxy, or otherwise has or shares:

(1) Voting power including the power to vote, or to direct the voting of, the security; or

(2) Investment power which includes the power to dispose, or to direct the disposition, of the security.

(d) "Commissioner" means the insurance commissioner of this state.

(e) "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the beneficial ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office. Control shall be presumed to exist if any person beneficially owns ten percent (10%) or more of the voting securities of any other person. The commissioner may determine this presumption has been rebutted only by a showing made in the manner provided by section 3(k) [IC 27-1-23-3(k)] of this chapter that control does not exist in fact, after giving all interested persons notice and an opportunity to be heard. Control shall be presumed again to exist upon the acquisition of beneficial ownership of each additional five percent (5%) or more of the voting securities of the other person. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(f) "Department" means the department of insurance created by IC 27-1-1-1.

(g) A "domestic insurer" is an insurer organized under the laws of this state.

(h) "Earned surplus" means an amount equal to the unassigned funds of an insurer as set forth in the most recent annual statement of an insurer that is submitted to the commissioner, excluding surplus arising from unrealized capital gains or revaluation of assets.

(i) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.

(j) "Insurer" has the same meaning as set forth in IC 27-1-2-3, except that it does not include:

(1) Agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(2) Fraternal benefit societies; or

(3) Nonprofit medical and hospital service associations.

(k) A "person" is an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(l) A "policyholder" of a domestic insurer includes any person who owns an insurance policy or annuity contract issued by the domestic insurer, any person reinsured by the domestic insurer under a reinsurance contract or treaty between the person and the domestic insurer, and any health maintenance organization with which the domestic insurer has contracted to provide services or protection against the cost of care.

(m) A "subsidiary" of a specified person is an affiliate controlled by that person directly or indirectly through one or more intermediaries.

(n) "Surplus" means the total of gross paid in and contributed surplus, special surplus funds, and unassigned surplus, less treasury stock at cost.

(o) "Voting security" includes any security convertible into or evidencing a right to acquire a voting security. [IC 27-1-23-1, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 1; P.L.26-1991, § 8; P.L.8-1993, § 416; P.L.26-1994, § 9; P.L.116-1994, § 38; P.L.130-1994, § 28; P.L.2-1995, § 100.]

Cross References. Exchange of securities, IC 27-3-1.

Indiana Law Journal. The Indiana Business Takeover Act, 51 Ind. L.J. 1051.

Cited: *Indiana Bell Tel. Co. v. Indiana Util. Regulatory Comm'n*, 715 N.E.2d 351 (Ind. 1999).

27-1-23-1.5. Notice of dividend. — (a) A domestic insurer that is a member of an insurance holding company system may not pay a dividend unless the insurer notifies the department of the dividend and the department receives the notice from the insurer:

(1) Not more than five (5) business days after the declaration of the dividend or distribution; and

(2) At least ten (10) days before the payment of the dividend or distribution.

(b) A notice provided by an insurer under subsection (a) must contain information indicating that the surplus of the insurer as regards policyholders will be:

(1) Reasonable in relation to the outstanding liabilities of the insurer; and

(2) Adequate to the financial needs of the insurer; following the payment of the dividend.

(c) After receiving a notice from an insurer under this section, the department shall promptly consider the information set forth in the notice under subsection (b). In the department's consideration of the information, the department shall apply the factors set forth in section 4(f) [IC 27-1-23-4(f)] of this chapter. [P.L.116-1194, § 39; P.L.130-1994, § 29.]

27-1-23-2. Acquisition of domestic insurer — Filing of documents — Hearings, requisites, procedure, rulings — Exceptions — Service of process. —

(a) No person other than the issuer shall commence a tender offer for or a request or invitation for tenders of, or enter into any agreement to purchase or exchange securities for, or otherwise seek to acquire, or acquire, in the open market or otherwise, or solicit proxies relating to, any voting security of a domestic insurer or of any corporation controlling a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to acquire control of a domestic insurer or of any corporation controlling a domestic insurer unless, at the time any such offer, request, or invitation is commenced or any such agreement is entered into, or any such solicitation is begun, or prior to the acquisition of such securities if no offer or agreement is involved:

(1) each acquiring party has filed with the commissioner and has sent to such insurer and any such controlling corporation a statement containing the information required by this section;

(2) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the commissioner; and

(3) two (2) business days have elapsed following the commissioner's determination approving the offer, request, invitation, agreement, solicitation, or acquisition;

all in the manner prescribed in this section.

(b) A statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of the acquiring party.

(2) If the acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years.

(3) If the acquiring party is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, including, but not limited to:

- (A) information relating to the acquisition or disposition of control by the acquiring party of any other person and any subsequent material change in the financial condition, management, organization, or operations of such other person;
 - (B) an informative description of the business intended to be done by the acquiring party and its affiliates;
 - (C) any plans or proposals for the conduct of the business or employment of the assets and surplus of the domestic insurer and any corporation controlling such insurer;
 - (D) an informative description of any transaction in which the acquiring party received, employed, or used any affiliate's assets;
 - (E) an informative description of any transaction or presently proposed transaction between the acquiring party and any of its affiliates in which either such acquiring party or such affiliate has a direct or indirect material interest; however, no information need be given as to any such transaction where the amount involved in the transaction or series of similar transactions, including all periodic payments or installments in the case of any lease or agreement providing for periodic payments or installments, does not or would not exceed one hundred thousand dollars (\$100,000); and
 - (F) a list of all individuals who are or who have been selected to become directors or officers of the acquiring party, or who perform or will perform functions appropriate to such positions, such list to include for each such individual the information required by clause (2) of this subsection.
- (4) The source, nature, and amount of the consideration to be used in effecting the acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of the insurer's subsidiaries or controlling affiliates), all documents evidencing, supporting, referring to, or relating to any such transaction and the identity of persons who are furnishing or who will furnish such consideration.
- (5) Fully audited financial information as to the earnings and financial condition of the acquiring party for its preceding five (5) fiscal years (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.
- (6) Any plans or proposals which the acquiring party may have to liquidate such domestic insurer or such controlling corporation, to sell its assets or merge or consolidate it with any person, or to make any other material change in its investment policy, business, corporate structure, or management.
- (7) The number of shares of any security referred to in subsection (a) which the acquiring party proposes to acquire, the terms of the proposed offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the terms of the proposal were arrived at.

(8) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the acquiring party.

(9) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which the acquiring party proposes to be or is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(10) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(11) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, or by anyone, based upon interviews or at the suggestion of such acquiring party.

(12) Copies of the proposed forms of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and of the proposed form of additional soliciting material relating thereto.

(13) The terms of any agreement, contract, or understanding made or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions, or other compensation paid or to be paid to broker-dealers with regard thereto.

(14) A full description of any existing or proposed contracts, arrangements, or understandings between the acquiring party and any present or former director, officer, or employee of the domestic insurer or of any corporation controlling such insurer. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(15) Copies of all studies, analyses, and reports which were prepared by or for the acquiring party or any affiliate of the acquiring party for the purpose of evaluating or analyzing the proposed acquisition of control with respect to market shares, competition, competitors, markets, and potential for growth or expansion into product or geographic markets.

(16) If the acquiring party or any affiliate of the acquiring party is an insurer:

(A) the amount of any premiums, deposits, or annuity considerations received by the insurer during each of the last five (5) fiscal years (calculated on an accrual basis) for each line of insurance business conducted in any section of this state, and copies of annual state-

ments for each of the last five (5) fiscal years filed by any such insurer with the insurance regulatory authority of its domiciliary jurisdiction;

(B) a full and complete description of any direct or indirect reinsurance relationship between the acquiring party or any affiliate of the acquiring party and the domestic insurer or any affiliate of the domestic insurer, together with copies of any treaties or contracts relating to that relationship; and

(C) such additional information as the commissioner may by rule or order prescribe as necessary or appropriate to enable him to make the determination required by subsection (e)(2).

(17) Such additional information as the commissioner may by rule or order prescribe as necessary or appropriate for the protection of policyholders or in the public interest.

If any material change occurs in the facts set forth in a statement filed with the commissioner and sent to the insurer and any controlling corporation under this section, an amendment made under oath or affirmation setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer and any controlling corporation within two (2) business days after any acquiring party learns of this change.

(c) If any acquiring party is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subdivisions (1) through (17) of subsection (b) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, person, or acquiring party is a corporation, the commissioner may require that the information called for by subdivisions (1) through (17) shall be given with respect to all individuals who are or have been selected to become directors or officers of any such corporation or who perform or will perform functions appropriate to these positions.

(d) If the proposed acquisition of control referred to in subsection (a) requires the filing of a registration statement under the federal Securities Act of 1933 (15 U.S.C. 77a-15 U.S.C. 77aa) or requires the disclosure of similar information under the federal Securities Exchange Act of 1934 (15 U.S.C. 78a-15 U.S.C. 78kk) or under a state law requiring similar registration or disclosure, an acquiring party may utilize such documents in furnishing the information called for by the statement.

(e) The commissioner shall hold a public hearing on the proposed acquisition of control referred to in subsection (a) and shall thereafter approve such acquisition of control only if he finds, by a preponderance of the evidence, that:

(1) the acquisition of control would not tend to affect adversely the contractual obligations of the domestic insurer or its ability and tendency to render service in the future to its policyholders and the public;

(2) the effect of the acquisition of control would not be substantially to lessen competition in any line of insurance business in any section of this state or tend to create a monopoly therein;

(3) the financial condition of any acquiring party is not such as might jeopardize the financial stability of the domestic insurer or of any corporation controlling such insurer, or prejudice the interest of its policyholders;

(4) the plans or proposals which any acquiring party has to liquidate the domestic insurer or any such controlling corporation, sell its assets or consolidate or merge it with any person, or to make any other material change in its investment policy, business, corporate structure, or management are fair and reasonable to policyholders of the domestic insurer and in the public interest; and

(5) the competence, experience, and integrity of those persons who would control the operation of the domestic insurer are such that the acquisition of control would not tend to affect adversely the general capacity or intention of the domestic insurer to transact the business of insurance in a safe and prudent manner.

(f) For the purposes of the commissioner's application of the competitive standard set forth in subsection (e)(2) to a proposed acquisition:

(1) the acquiring person must file a pre-acquisition notification that meets the requirements set forth in section 2.5(e) [IC 27-1-23-2.5(e)] of this chapter;

(2) the commissioner shall apply the provisions of section 2.5(h) [IC 27-1-23-2.5(h)] of this chapter; and

(3) the commissioner may not disapprove the acquisition based upon the application of subsection (e)(2) if the commissioner finds that either of the conditions set forth in section 2.5(i) [IC 27-1-23-2.5(i)] of this chapter applies to the proposed acquisition.

(g) The public hearing referred to in subsection (e) shall be held within sixty (60) days after all statements required by subsection (a) are filed, or within such longer period after the statements are filed as the commissioner determines upon a showing of good cause therefor, in the city of Indianapolis at such place, date, and time as the commissioner shall specify. At least thirty (30) days written notice of the hearing shall be given by the commissioner to each acquiring party, the domestic insurer, any corporation controlling such insurer, and to other persons as the commissioner may designate. In the event that an amendment to any such statement is filed, the hearing shall be postponed for a further period not to exceed sixty (60) days after the filing of such amendment, or for such longer period after the amendment is filed as the commissioner determines upon a showing of good cause therefor.

(h) The commissioner shall give notice of the hearing by publication in a newspaper of general circulation in the city of Indianapolis, and in the city wherein is located the principal office of the domestic insurer, and in such other city or cities as he may deem appropriate. Any policyholder of the domestic insurer who makes a written request to the commissioner is entitled to a copy of all statements, amendments, or other material filed with the commissioner by any acquiring party.

(i) The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All hearing expenses, including transcript costs, expenses of publication and of preparing and mailing material to policyholders, shall be borne equally by each acquiring party. As security for the payment of such expenses, each acquiring party shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(j) At such hearing, each acquiring party, the domestic insurer, any corporation controlling such insurer, policyholders of the domestic insurer, and any other person whose interests may be affected by the proposed acquisition of control shall have the right to appear and become party to the proceeding. Each such person shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as provided in the Indiana Rules of Trial Procedure. The commissioner may employ any sanction or power granted courts in the Indiana Rules of Trial Procedure, excluding the power of contempt, to enforce his discovery rulings or orders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing and shall immediately upon making that determination notify all persons who appeared and became parties to the proceeding of that determination. To permit an aggrieved party to perfect an appeal under IC 27-1-23-12, no offer, request, invitation, agreement, or acquisition referred to in subsection (a) may be commenced, entered into, or consummated until two (2) business days have elapsed following the commissioner's determination approving an acquisition of control.

(k) Except as otherwise provided in this section, the hearing and the determination made therein shall be subject to IC 4-21.5-3.

(l) The provisions of this section shall not apply to the following:

(1) Any merger, consolidation, or plan of exchange to be consummated with the approval of the commissioner under the laws of this state.

(2) Any transaction to be undertaken under a statutory procedure for the purchase of dissenting shareholder's stock.

(3) Any transaction to be undertaken under a judicially approved reorganization.

(4) Any offer, request, invitation, agreement, solicitation, or acquisition respecting any security of a domestic insurer or of any corporation controlling such insurer if any acquiring party, immediately prior to such offer, request, invitation, agreement, solicitation, or acquisition being commenced, entered into, begun, or consummated, beneficially owns more than fifty percent (50%) of all the outstanding voting securities of such domestic insurer or corporation controlling such insurer.

(5) Any solicitation of proxies respecting any security of a domestic insurer or of any corporation controlling a domestic insurer that is undertaken by the management or the board of directors of the issuer of

the security for purposes other than effecting, directly or indirectly, a transaction that would otherwise be subject to the requirements of this section.

(6) Any offer, request, invitation, agreement, solicitation, or acquisition respecting a security of a non-insurance corporation controlling one (1) or more domestic insurers if all of the following conditions are met:

(A) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the insurance regulatory authority of any state or territory of the United States of America other than Indiana, and the insurance regulatory authority of the state or territory has been accredited by the National Association of Insurance Commissioners;

(B) the domestic insurer or insurers meet all of the following conditions, determined in accordance with generally accepted accounting principles:

(i) the investments in and advances to the domestic insurer or insurers by the controlling non-insurance corporation and its other subsidiaries equal less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year;

(ii) the proportionate share of the controlling non-insurance corporation and its other subsidiaries in the total assets (after intercompany eliminations) of the domestic insurer or insurers equals less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year; and

(iii) the equity of the controlling non-insurance corporation and its other subsidiaries in the income from continuing operations before income taxes, extraordinary items, and the cumulative effect of a change in accounting principle of the domestic insurer or insurers is less than ten percent (10%) of the income of that corporation and all of its subsidiaries consolidated for the end of the most recently completed fiscal year; and

(C) the commissioner has not determined that the application of this section to the offer, request, invitation, agreement, solicitation, or acquisition is necessary or appropriate for the protection of policyholders of the domestic insurer or insurers.

(7) Any acquisition of stock of a former mutual by a parent company, as those terms are defined in IC 27-15-1, that occurs in connection with the conversion of a mutual insurance company to a stock insurance company under IC 27-15, provided that no person acquires control of the parent company.

(m) The courts of this state are hereby vested with jurisdiction over every acquiring party not resident, domiciled, or authorized to do business in this state, and over all actions involving each such acquiring party arising out of violations of this section, and each such acquiring party shall be deemed to have performed acts equivalent to and constituting an appointment by the

acquiring party of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such acquiring party at his last known address. [IC 27-1-23-2, as added by Acts 1971, P.L. 387, § 1; 1979, P.L. 252, § 1; 1981, P.L. 244, § 2; P.L.2-1987, § 38; P.L.26-1991, § 9; P.L.116-1994, § 40; P.L.130-1994, § 30; P.L.94-1999, § 2.]

Indiana Law Journal. The Indiana Business Takeover Act, 51 Ind. L.J. 1051.

NOTES TO DECISIONS

Stockholder Lists.

This section vested sole jurisdiction over the production or inspection of stockholder lists in the state department of insurance, and a stockholder of an insurance company

could not by suit compel the company to produce such lists in an action involving a proxy fight. State ex rel. Great Fid. Life Ins. Co. v. Circuit Court, 259 Ind. 441, 33 Ind. Dec. 168, 288 N.E.2d 143 (1972).

27-1-23-2.5. Definitions — Applicability of section — Pre-acquisition notification — Waiting period — Order. — (a) The following definitions apply throughout this section:

(1) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person. The term includes the acquisition of voting securities, and the acquisition of assets, assumption reinsurance, and mergers.

(2) "Involved insurer" includes an insurer that:

- (A) Acquires;
- (B) Is acquired;
- (C) Is affiliated with an acquirer;
- (D) Is affiliated with an acquired; or
- (E) Is the result of a merger.

(b) Except as provided in subsection (c), this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in Indiana.

(c) This section does not apply to the following:

- (1) An acquisition subject to approval or disapproval by the commissioner under section 2 [IC 27-1-23-2] of this chapter.
- (2) A purchase of securities solely for investment purposes, so long as those securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control under section 1(e) [IC 27-1-23-1(e)] of this chapter, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and this disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of Indiana.

(3) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if a pre-acquisition notification is filed with the commissioner in accordance with subsection (d) at least thirty (30) days before the proposed effective date of the acquisition. However, a pre-acquisition notification is not required for an exclusion from this section if the acquisition would otherwise be excluded from this section by any other subdivision of this subsection.

(4) The acquisition of persons already affiliated with the acquirer.

(5) An acquisition if, as an immediate result of the acquisition:

(A) In no market would the combined market share of the involved insurers exceed five percent (5%) of the total market;

(B) There would be no increase in any market share; or

(C) In no market would the combined market share of the involved insurers:

(i) Exceed twelve percent (12%) of the total market; or

(ii) Increase by more than two percent (2%) of the total market.

(6) An acquisition for which a pre-acquisition notification would be required under this section due solely to the resulting effect on the ocean marine insurance line of business.

(7) An acquisition of an insurer, if:

(A) The domiciliary commissioner of the insurer affirmatively finds that:

(i) The insurer is in failing condition;

(ii) There is a lack of feasible alternatives to improving that condition; and

(iii) The public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition; and

(B) Those findings are communicated by the domiciliary commissioner to the commissioner of Indiana.

For the purposes of this subsection, a "market" means the total direct written insurance premium of all insurers providing insurance in Indiana for a particular line of business, as reported in the annual statements required to be filed by insurers licensed to do business in Indiana.

(d) An order pursuant to subsection (j) may be entered with respect to an acquisition to which this section applies unless the acquiring person files a pre-acquisition notification with respect to the acquisition and the waiting period referred to in subsection (f) has expired. An acquired person may also file a pre-acquisition notification with respect to an acquisition. Information in pre-acquisition notifications filed under this section is confidential and protected from disclosure under section 6 [IC 27-1-23-6] of this chapter.

(e) A pre-acquisition notification filed under this section must be in the form and must contain the information prescribed by the National Association of Insurance Commissioners with respect to markets that meet the description set forth in subsection (c)(5), causing an acquisition not to be exempted from the provisions of this section. The commissioner may require additional material and information that the commissioner considers nec-

essary to determine whether the proposed acquisition, if consummated, would violate the competitive standard set forth in subsection (g). The required information may include an opinion of an economist as to the competitive impact of the acquisition in Indiana, accompanied by a summary of the education and experience of the economist, indicating the economist's ability to render an informed opinion.

(f) The waiting period required with respect to a proposed acquisition begins on the day when the commissioner receives a pre-acquisition notification and ends:

- (1) On the thirtieth day after the day the commissioner receives the notification; or
- (2) Upon the commissioner's termination of the waiting period, if earlier.

Before the end of the waiting period, the commissioner, on a one-time basis, may require the submission of additional needed information relevant to the proposed acquisition. If the commissioner requests additional information under this subsection, the waiting period ends on the earlier of the thirtieth day after receipt of the additional information by the commissioner or the termination of the waiting period by the commissioner.

(g) The commissioner may enter an order under subsection (j) with respect to an acquisition if:

- (1) There is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in Indiana or to tend to create a monopoly in any line of insurance in Indiana; or
- (2) The insurer fails to file adequate information in compliance with subsections (d) and (e).

(h) In determining whether a proposed acquisition to which this section applies would violate the competitive standard set forth in subsection (g), the commissioner shall consider the following:

- (1) An acquisition to which this section applies that involves two (2) or more insurers competing in the same market is prima facie evidence of a violation of the competitive standard:
 - (A) If the market is highly concentrated and the involved insurers possess the following shares of the market:
 - (i) Insurer A a share of four percent (4%) and insurer B a share of (4%) or more.
 - (ii) Insurer A a share of ten percent (10%) and insurer B a share of two percent (2%) or more.
 - (iii) Insurer A a share of fifteen percent (15%) and insurer B a share of one percent (1%) or more.
 - (B) If the market is not highly concentrated and the involved insurers possess the following shares of the market:
 - (i) Insurer A a share of five percent (5%) and insurer B a share of five percent (5%) or more.
 - (ii) Insurer A a share of ten percent (10%) and insurer B a share of four percent (4%) or more.
 - (iii) Insurer A a share of fifteen percent (15%) and insurer B a share of three percent (3%) or more.

(iv) Insurer A a share of nineteen percent (19%) and insurer B a share of one percent (1%) or more.

For the purposes of this subdivision, a highly concentrated market is a market in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not referred to in this subdivision must be interpolated proportionately to the percentages that are referred to in this subdivision. If more than two (2) insurers are involved in a proposed acquisition, exceeding the total of the two (2) figures set forth for insurer A and insurer B in an item set forth in this subdivision is prima facie evidence of violation of the competitive standard set forth in subsection (g). For the purpose of this subdivision, the insurer with the largest share of the market shall be considered to be insurer A.

(2) There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years before the acquisition up to the time of the acquisition. Any acquisition or merger to which this section applies involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard set forth in subsection (g) if:

(A) There is a significant trend toward increased concentration in the market;

(B) One (1) of the insurers involved is one (1) of the insurers in a grouping of those large insurers showing the requisite increase in the market share; and

(C) The market share of another involved insurer is two percent (2%) or more.

(3) For the purposes of this subsection:

(A) The term "insurer" includes any company or group of companies under common management, ownership, or control.

(B) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets with respect to an acquisition, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners, and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business that is used in the annual statement required to be filed by insurers doing business in Indiana, and the relevant geographical market is assumed to be Indiana.

(C) The burden of showing prima facie evidence of a violation of the competitive standard rests upon the commissioner.

(4) Even though an acquisition is not prima facie violative of the competitive standard under subdivisions (1) and (2), the commissioner

may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under subdivisions (1) and (2), a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this subdivision include, but are not limited to, the following:

- (A) Market shares.
 - (B) Volatility of ranking of market leaders.
 - (C) Number of competitors.
 - (D) Concentration and trend of concentration in the industry.
 - (E) Ease of entry into and exit from the market.
- (i) An order may not be entered under subsection (j) if:
- (1) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits that would arise from those economies exceed the public benefits that would arise from not lessening competition; or
 - (2) The acquisition will substantially increase the availability of insurance, and the public benefits of that increase exceed the public benefits that would arise from not lessening competition.
- (j) If an acquisition violates the standards set forth in this section, the commissioner may enter an order:
- (1) Requiring an involved insurer to cease and desist from doing business in Indiana with respect to the line or lines of insurance involved in the violation; or
 - (2) Denying the application of an acquired or acquiring insurer for a license to do business in Indiana.
- (k) An order may not be entered under subsection (j) unless:
- (1) There is a hearing;
 - (2) Notice of the hearing is issued before the end of the waiting period and not less than fifteen (15) days before the hearing; and
 - (3) The hearing is concluded and the order is issued not more than sixty (60) days after the end of the waiting period.

Every order shall be accompanied by a written decision of the commissioner setting forth the commissioner's findings of fact and conclusions of law.

(l) An order entered under subsection (j) shall not become final less than thirty (30) days after it is issued, during which time the involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition within a reasonable time. Based upon that plan or other information, the commissioner shall specify the conditions, if any, under which the aspects of the acquisition causing a violation of the standards of this section would be remedied and the order vacated or modified, and the time period within which those aspects would have to [be] remedied.

(m) An order entered under subsection (j) does not apply if the acquisition to which the order applies is not consummated.

(n) A person who violates a cease and desist order issued by the commissioner under subsection (j) while that order is in effect may, after

notice and hearing under IC 4-21.5 and upon order of the commissioner, be subject at the discretion of the commissioner to any one (1) or more of the following:

- (1) A civil penalty of not more than ten thousand dollars (\$10,000) for each day of violation.
- (2) The suspension or revocation of the person's license.
- (3) Both a monetary penalty under subdivision (1) and the suspension or revocation or [of] the person's license under subdivision (2).
- (o) An insurer or other person who fails to make any filing required by this section and also fails to demonstrate a good faith effort to comply with that filing requirement is subject to a civil penalty of not more than fifty thousand dollars (\$50,000).
- (p) Sections 8(b), 8(c), and 10 [IC 27-1-23-8(b), IC 27-1-23-8(c), and IC 27-1-23-10] of this chapter do not apply to an acquisition to which this section applies. [P.L.26-1991, § 10.]

Compiler's Notes. The bracketed words (n)(3), respectively, by the compiler for purposes of clarity. "be" and "of" were inserted in the second sentence of subsection (l) and in subsection

27-1-23-3. Insurance holding company registration — Data requirements — Exceptions — Disclaimers. — (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in:

- (1) This section;
- (2) Section 4(a) and 4(c) [IC 27-1-23-4(a) and IC 27-1-23-4(c)] of this chapter; and
- (3) Section 4(b) [IC 27-1-23-4(b)] of this chapter or a provision such as the following:

Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions within fifteen days after the end of the month in which it learns of each such change or addition.

Any insurer which is subject to registration under this section shall register within fifteen (15) days after it becomes subject to registration, and annually thereafter by March 15 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within such extended time. The commissioner may require any authorized insurer which is a member of an insurance holding company system but not subject to registration under this section to furnish a copy of the registration statement or other information filed by such insurer with the insurance regulatory authority of its domiciliary jurisdiction.

(b) Every insurer subject to registration shall file a registration statement on a form prescribed by the commissioner, which shall contain current information about:

- (1) The capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;
- (2) The identity of every member of the insurance holding company system;
- (3) The following agreements in force, relationships subsisting, and transactions that are currently outstanding or that have occurred during the last calendar year between such insurer and its affiliates:
 - (i) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - (ii) Purchases, sales, or exchanges of assets;
 - (iii) Transactions not in the ordinary course of business;
 - (iv) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;
 - (v) All management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles; and
 - (vi) Reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding insurer;
 - (vii) Dividends and other distributions to shareholders; and
 - (viii) Consolidated tax allocation agreements;
- (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system; and
- (5) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms prescribed by the commissioner.
- (c) Every registration statement must contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- (d) No information need be disclosed on the registration statement filed pursuant to subsection (b) if such information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one per cent (1%) or less of an insurer's admitted assets as of the 31st day of December next preceding shall not be deemed material for purposes of this section.
- (e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms prescribed by the commissioner within fifteen (15) days after the end of the month in which it learns of each such change or addition.
- (f) A person within an insurance holding company system subject to registration under this chapter shall provide complete and accurate information to an insurer when that information is reasonably necessary to enable the insurer to comply with this chapter.

(g) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is subject to the provisions of this section.

(h) The commissioner may require or allow two (2) or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(i) The commissioner may allow an insurer which is authorized to do business in this state and which is a member of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) and to file all information and material required to be filed under this section.

(j) The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.

(k) Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between such person and such insurer as well as the basis for disclaiming such affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such disclaimer. The commissioner shall disallow such disclaimer only after furnishing all parties in interest with notice and opportunity to be heard. [IC 27-1-23-3, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 3; P.L.26-1991, § 11.]

27-1-23-4. Insurers' transaction standards — Reasonable surplus standards — Extraordinary distributions prohibited. — (a) Material transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

- (1) The terms shall be fair and reasonable.
- (2) The charges or fees for services performed shall be reasonable.
- (3) The expenses incurred for any payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.
- (4) The books, accounts and records of each party as to all transactions described in this subsection shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties.
- (5) The insurer's surplus as regards policyholders following any transactions with affiliates or shareholder dividend shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and any person in its insurance holding company system may not be entered into

unless the insurer has notified the commissioner in writing of its intention to enter into such transaction at least thirty (30) days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period:

- (1) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments, provided those transactions are equal to or exceed:
 - (A) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and
 - (B) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

- (2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes those loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, provided those transactions are equal to or exceed:

- (A) With respect to nonlife insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders; and
- (B) With respect to life insurers, three percent (3%) of the insurer's admitted assets;

each as of December 31 next preceding.

- (3) Reinsurance agreements or modifications thereto in which the amount of cash or invested assets transferred by the insurer equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer.

- (4) Management agreements, service contracts, and cost-sharing arrangements.

- (5) Material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

This subsection does not authorize or permit any transactions that, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

- (c) A domestic insurer may not enter into transactions that are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.

- (d) The commissioner, in reviewing transactions pursuant to subsection (b), shall consider whether the transactions comply with the standards set

forth in subsection (a) and whether the transactions may adversely affect the interests of policyholders.

(e) The commissioner shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent (10%) of the corporation's voting securities.

(f) For purposes of this chapter, in determining whether an insurer's surplus is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(2) The extent to which the insurer's business is diversified among the several lines of insurance.

(3) The number and size of risks insured in each line of business.

(4) The extent of the geographical dispersion of the insurer's insured risks.

(5) The nature and extent of the insurer's reinsurance program.

(6) The quality, diversification, and liquidity of the insurer's investment portfolio.

(7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders.

(8) The surplus as regards policyholders maintained by other comparable insurers in respect of the factors described in subdivisions (1) through (7).

(9) The adequacy of the insurer's reserves.

(10) The quality and liquidity of investments in subsidiaries, except that the commissioner may discount or treat any such investment in subsidiaries as a disallowed asset for purposes of determining the adequacy of surplus whenever in his judgment such investment so warrants.

(11) The quality of the earnings of the insurer and the extent to which the reported earnings of the insurer include extraordinary items.

(g) No domestic insurer subject to registration under section 3 [IC 27-1-23-3] of this chapter shall pay an extraordinary dividend or make any other extraordinary distribution to its security holders until:

(1) Thirty (30) days after the commissioner has received notice of the declaration thereof and has not within such period disapproved such payment; or

(2) The commissioner shall have approved such payment within such thirty (30) day period.

(h) For purposes of subsection (g), an extraordinary dividend or distribution is any dividend or distribution of cash or other property whose fair market value, together with that of other dividends or distributions made within the twelve (12) consecutive months ending on the date on which the proposed dividend or distribution is scheduled to be made, exceeds the greater of:

- (1) Ten percent (10%) of such insurer's surplus as regards policyholders as of the most recently preceding December 31; or
- (2) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if such insurer is not a life insurer, for the twelve (12) month period ending on the most recently preceding December 31.

(i) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval thereof, but such a declaration shall confer no rights upon shareholders until:

- (1) The commissioner has approved the payment of such dividend or distribution; or
- (2) The commissioner has not disapproved the payment within the thirty (30) day period referred to in subsection (g). [IC 27-1-23-4, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 4; P.L.26-1991, § 12; P.L.116-1994, § 41; P.L.130-1994, § 31.]

27-1-23-5. Examination of insurers' records — Requisites — Expert advisors — Expenses. — (a) Subject to the limitations contained in this section and in addition to the powers which the commissioner has under the insurance laws of this state relating to the examination of insurers, the commissioner shall have the power to order any insurer registered under section 3 [IC 27-1-23-3] of this chapter to produce such records, books, or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the commissioner shall have the power to examine such insurer or affiliates to obtain such information.

(b) The commissioner shall exercise his power under subsection (a) only if the examination of the insurer under the insurance laws of this state is deemed inadequate for the purposes of this chapter or if the interests of the policyholders of such insurer may be adversely affected.

(c) The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a). Any persons so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Each registered insurer producing for examination records, books and papers pursuant to subsection (a) shall be liable for and shall pay the expense of such examination. [IC 27-1-23-5, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 5; P.L.26-1991, § 13.]

27-1-23-6. Confidentiality of insurers' records — Exceptions. — All information, documents and copies thereof obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to section 5 [IC 27-1-23-5] of this chapter and all information reported pursuant to section 2.5 and section 3 [IC 27-1-23-

2.5 and IC 27-1-23-3] of this chapter shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the commissioner, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders or the public will be served by the publication thereof, in which event he may publish all or any part thereof in such manner as he may deem appropriate. [IC 27-1-23-6, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 6; P.L.26-1991, § 14.]

Collateral References. Compelling party to disclose information in hands of affiliated or subsidiary corporation, or independent contractor, not made party to suit. 19 A.L.R.3d 1134.

Insured-insurer communications as privileged. 55 A.L.R.4th 336.

27-1-23-7. Rules and regulations. — The commissioner may adopt, under IC 4-22-2, such rules and orders as are necessary to carry out this chapter, including emergency rules under IC 4-22-2-37.1. [IC 27-1-23-7, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 7; P.L.26-1991, § 15.]

27-1-23-8. Injunctions — Restrictions on use of insurance securities — Seizure and sequestration of insurance securities — Effect of violations. — (a) Whenever it appears to the commissioner that any person has committed or is about to commit a violation of this chapter or of any rule or order issued by the commissioner hereunder, the commissioner may apply to the circuit court for the county in which such person resides or, in the case of a corporation or other entity, has its principal office, or if such person has no such residence or office in this state then to the circuit court of Marion County, for an order enjoining such person from violating or continuing to violate this chapter or any such rule or order, and for such other equitable relief as the nature of the case and the interests of policyholders or the public may require.

(b) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule or order issued by the commissioner hereunder may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though such securities were not issued and outstanding; but no action taken at any such meeting shall be invalidated by the voting of such securities, unless the action would materially affect control of a domestic insurer or any corporation controlling such insurer or unless the courts of this state have so ordered. If a domestic insurer, any corporation controlling such insurer or the commissioner has reason to believe that any security of the domestic insurer or any corporation controlling such insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule or order issued by the commissioner hereunder, the domestic insurer, any

corporation controlling such insurer or the commissioner may apply to the circuit court of Marion County or to the circuit court of the county in which the domestic insurer or corporation controlling such insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition commenced, entered into, or consummated in contravention of this chapter or any rule or order issued by the commissioner under this chapter, to enjoin the voting of any security so acquired, to void any vote of such security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of the domestic insurer's policyholders or the public may require.

(c) In any case where a person has acquired or is proposing to acquire securities in violation of this chapter or any rule or order issued by the commissioner hereunder, the circuit court of Marion County or the circuit court of the county in which the domestic insurer or any corporation controlling such insurer has its principal place of business may, on such notice as the court deems appropriate, upon the application of the domestic insurer, any corporation controlling such insurer or the commissioner, seize or sequester any such securities owned directly or indirectly by such person, and issue such orders with respect thereto as may be appropriate to effectuate the provisions of this chapter. Notwithstanding any other provision of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers and corporations controlling such insurers shall be deemed to be in this state.

(d) Violation of this chapter or any rule or order issued by the commissioner under this chapter shall be deemed to be irreparable harm for the purpose of obtaining any form of equitable relief. [IC 27-1-23-8, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 8.]

27-1-23-9. [Repealed.]

Compiler's Notes. This section, concerning criminal proceedings and penalties for violation of the chapter, was repealed by Acts 1981, P.L. 244, § 12.

27-1-23-10. Commissioner managing domestic insurer — Requisites. — Whenever it appears to the commissioner that any person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders or the public, the commissioner may proceed as provided in the insurance laws of this state to take possession of the property of such domestic insurer and to conduct the business thereof. A determination made under this section must be accompanied by specific findings of fact and conclusions of law. [IC 27-1-23-10, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 9; P.L.26-1991, § 16.]

27-1-23-10.5. Recovery of payments and distributions. — (a) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

(1) From any parent corporation or holding company or person or affiliate that otherwise controlled the insurer, the amount of distributions other than distributions of shares of the same class of stock paid by the insurer on the insurer's capital stock; or

(2) Any payment in the form of a bonus, a termination settlement, or an extraordinary lump sum salary adjustment made by the insurer or the insurer's subsidiaries to a director, an officer, or an employee;

if the distribution or payment described in subdivision (1) or (2) is made at any time during the one (1) year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (b), (c), and (d).

(b) A distribution is not recoverable if the parent or affiliate shows that, when paid, the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill the insurer's contractual obligations.

(c) Any person that was a parent corporation or holding company or a person that otherwise controlled the insurer or affiliate at the time distributions described in subsection (a) were paid shall be liable up to the amount of distributions or payments under subsection (a) that the person received. Any person that otherwise controlled the insurer at the time the distributions were declared shall be liable up to the amount of distributions the person would have received if the distributions had been paid immediately. If at least two (2) persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(e) To the extent that any person liable under subsection (c) is insolvent or otherwise fails to pay claims due from the person, the person's parent corporation or holding company or the person that otherwise controlled the person at the time the distribution was paid is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person that otherwise controlled the person. [P.L.116-1194, § 42; P.L.130-1994, § 32.]

27-1-23-11. Suspension or revocation of insurer's license — Requisites. — Whenever it appears to the commissioner that any person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer's license or authority to do business in this state for such period as he finds is required for the protection of policyholders or the public. [IC 27-1-23-11, as added by Acts 1971, P.L. 387, § 1.]

27-1-23-12. Judicial review of commissioner's actions — Stay of actions — Judicial mandate to commissioner. — (a) Any person

aggrieved by any agency action of the commissioner pursuant to this chapter may petition for judicial review thereof in accordance, so far as practical, with IC 4-21.5-5.

(b) Notwithstanding IC 4-21.5-5, the filing of a petition for review of the commissioner's determination approving an acquisition of control under section 2 [IC 27-1-23-2] of this chapter shall stay the application of any such determination or other action of the commissioner unless the court to which the petition is directed, after giving the petitioner notice and an opportunity to be heard, determines that such a stay would be detrimental to the interests of policyholders or the public.

(c) Any person aggrieved by any failure of the commissioner to act or make a determination required by this chapter may bring an action for mandate in the circuit court of Marion County to compel the commissioner to act or make such determination forthwith. [IC 27-1-23-12, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 10; P.L.7-1987, § 141.]

NOTES TO DECISIONS

Federal Courts.
The doctrine of judicial abstention did not require abstention by a federal district court in the case of an action for declaratory judgment and injunctive relief to determine the constitutionality of certain provisions of this chapter where abstention was inappropriate

because no complex issues of state regulatory law were involved, and the state had not created specific review courts for decisions of the insurance commissioner regarding acquisition of insurance holding companies. *Alleghany Corp. v. Eakin*, 712 F. Supp. 716 (S.D. Ind. 1989).

27-1-23-13. Relationship of this chapter to other Indiana insurance statutes. — This chapter, while independent in its enactment of any other law, shall be supplemental to the Indiana Insurance Law (IC 27-1-2 through IC 27-1-20). All provisions of IC 27-1-2 through IC 27-1-20 shall be fully and completely applicable to this chapter in the same manner as if the provisions of this chapter had been an original part of IC 27-1-2 through IC 27-1-20. This chapter shall be controlling in the event there exists any conflict between this chapter and IC 27-1-2 through IC 27-1-20. [IC 27-1-23-13, as added by Acts 1971, P.L. 387, § 1; 1981, P.L. 244, § 11.]

CHAPTER 24
CERTIFICATION OF PUBLIC ADJUSTERS

27-1-24-1 — 27-1-24-9. [Repealed.]

Compiler's Notes. This chapter, concerning certification of public adjusters, was repealed by P.L.257-1983, § 3. For present sim-

ilar provisions, see IC 27-1-27-1 — IC 27-1-27-11.

CHAPTER 25
INSURANCE ADMINISTRATORS

SECTION.
27-1-25-1. Definitions.
27-1-25-2. Written agreement between administrator and user of ser-

SECTION.
vices — Retention of agreement — Policy issued to trustee — Provisions required

SECTION.

- Filing of agreement.
- 27-1-25-3. Presumptions.
- 27-1-25-4. Books and records — Maintenance and inspections — Confidential information.
- 27-1-25-5. Use of advertising.
- 27-1-25-6. Collection or return of premiums or charges — Fiduciary bank account — Records of deposits and withdrawals — Reasons for withdrawals.
- 27-1-25-7. Payment of claims on drafts authorized by user of services.
- 27-1-25-7.5. Recoding a claim for health care services — Required notice to insured and provider.
- 27-1-25-8. Compensation of administrator.
- 27-1-25-9. Delivery of written communications to policyholders.

SECTION.

- 27-1-25-10. Notice to insured persons of written agreement under IC 27-1-25-2 — Statement to person paying premium.
- 27-1-25-11. Conditions for acting as administrator — Certificate of registration — Designation of commissioner as agent for service of process.
- 27-1-25-12. Waiver of requirements of IC 27-1-25-11.
- 27-1-25-13. Public documents — Exceptions — Confidentiality of financial information.
- 27-1-25-14. Regulations.
- 27-1-25-15. Violations.

27-1-25-1. Definitions. — As used in this chapter:

(a) “Administrator”, except as provided in section 7.5 [IC 27-1-25-7.5] of this chapter, means a person who collects charges or premiums from, or who adjusts or settles claims on, residents of Indiana in connection with life or health coverage or annuities, whether provided for by an insurer or a self-funded plan. The term “administrator” does not include the following persons:

- (1) An employer for its employees or for the employees of a subsidiary or affiliated corporation of the employer.
- (2) A union for its members.
- (3) An insurer, including:
 - (A) an insurer operating a health maintenance organization or a limited service health maintenance organization; and
 - (B) the sales representative of an insurer operating a health maintenance organization or a limited service health maintenance organization when that sales representative is licensed in Indiana and when it is engaged in the performance of its duties as the sales representative.
- (4) A life or health insurance agent licensed under IC 27-1-15.5 whose activities are limited exclusively to the sale of insurance.
- (5) A creditor for its debtors regarding insurance covering a debt between them.
- (6) A trust established under 29 U.S.C. 186 and the trustees, agents, and employees acting pursuant to that trust.
- (7) A trust that is exempt from taxation under Section 501(a) of the Internal Revenue Code and:
 - (A) the trustees and employees acting pursuant to that trust; or
 - (B) a custodian and the agents and employees of the custodian acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code.
- (8) A financial institution that is subject to supervision or examination by federal or state banking authorities.

- (9) A credit card issuing company that advances for and collects premiums or charges from its credit cardholders as long as that company does not adjust or settle claims.
- (10) An individual who adjusts or settles claims in the normal course of his practice or employment as an attorney at law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities.
- (11) A health maintenance organization that has a certificate of authority issued under IC 27-13.
- (12) A limited service health maintenance organization that has a certificate of authority issued under IC 27-13.
- (b) "Certificate of registration" refers to the certificate required by section 11 [IC 27-1-25-11] of this chapter.
- (c) "Commissioner" refers to the commissioner of insurance.
- (d) "Financial institution" means a bank, savings association, credit union, or any other institution regulated under IC 28 or federal law.
- (e) "Insurer" means a person who obtains a certificate of authority under IC 27-1-3-20.
- (f) "Person" means an individual, a corporation, a partnership, a limited liability company, or an unincorporated association.
- (g) "Self-funded plan" means a plan for providing benefits for life, health, or annuity coverage by a person who is not an insurer. [IC 27-1-25-1, as added by Acts 1980, P.L. 168, § 2; 1982, P.L. 165, § 1; P.L.26-1991, § 18; P.L.26-1994, § 10; P.L.2-1995, § 101; P.L.185-1996, § 9; P.L.79-1998, § 31; P.L.207-1999, § 1; P.L.255-1999, § 1.]

Compiler's Notes. Section 501(a) of the Internal Revenue Code, referred to in subsection (a)(7) above, and section 401(f) of the Internal Revenue Code, referred to in subsection

(a)(7)(B) above, may be found at 26 U.S.C. § 501(a) and 26 U.S.C. § 401(f), respectively.

27-1-25-2. Written agreement between administrator and user of services — Retention of agreement — Policy issued to trustee — Provisions required — Filing of agreement. — (a) An administrator may act only if there is a written agreement between the administrator and insurer, employer, employee group, or any other group using the services of an administrator. This agreement must conform to the requirements of sections 4 through 9 [IC 27-1-25-4 through IC 27-1-25-9] of this chapter, which apply to the functions performed by the administrator.

(b) An agreement between an administrator and an insurer, employer, employee group, or any other group must be retained by both parties as part of their official records for a period of not less than five (5) years after the termination of the agreement.

(c) When a policy is issued to a trustee, a copy of the trust agreement and all amendments to it must be:

- (1) Furnished by the administrator to the insurer, employer, employee group, or any other group with which it holds a contract; and
- (2) Retained as part of the official records of the administrator for a period of not less than five (5) years after the termination of the trust.

(d) The written agreement must contain provisions concerning the standard of underwriting required by the insurer, employer, employee group, or any other group that is a party to the agreement.

(e) The commissioner may require any written agreement executed by an administrator and an insurer, employer, employee group, or any other group to be filed with the department of insurance at the time the administrator applies for a certificate of registration, as required by section 11 [IC 27-1-25-11] of this chapter. The commissioner may require any written agreement executed subsequent to the original issue of the certificate of registration to the administrator to be filed with the department at the time the administrator is applying for renewal of the certificate of registration. [IC 27-1-25-2, as added by Acts 1980, P.L. 168, § 2; 1982, P.L. 165, § 2.]

27-1-25-3. Presumptions. — (a) If an insurer utilizes the services of an administrator:

(1) The payment to the administrator of premiums or charges for insurance by or on behalf of the insured are presumed to have been received by the insurer; and

(2) The payment of claims or return premiums by the insurer to the administrator are not presumed to have been paid to the insured or claimant until the payment is received by the insured or claimant.

(b) This section does not limit the rights of an insurer against an administrator resulting from the failure of the administrator to make payments to the insurer, insured parties, or claimants. [IC 27-1-25-3, as added by Acts 1980, P.L. 168, § 2; P.L.26-1991, § 19.]

27-1-25-4. Books and records — Maintenance and inspections — Confidential information. — (a) For the duration of the agreement and for five (5) years after the termination of an agreement, an administrator or successor administrator shall maintain at its principal administrative office books and records of all transactions between it, insurers, employers, employee group, or any other group using the services of an administrator. The books and records must be maintained in accordance with generally accepted standards of insurance bookkeeping.

(b) The commissioner is entitled to inspect all books and records of the administrator for the purpose of examinations and audits. Trade secrets contained within those books and records, including the identity and addresses of policyholders and certificate holders, are to remain confidential. However, the commissioner may use that confidential information in proceedings instituted against the administrator.

(c) Any insurer, employer, employee group, or any other group using the services of the administrator is entitled to inspect the books and records of the administrator to the extent necessary for it to fulfill all of its contractual obligations to insured or covered persons. The right of the insurer, employer, employee group, or other group using the services of an administrator under this subsection is subject to any restrictions contained in the written agreement between such party and administrator. [IC 27-1-25-4, as added by Acts 1980, P.L. 168, § 2; 1982, P.L. 165, § 3; P.L.2-1995, § 102.]

27-1-25-5. Use of advertising. — An administrator may use advertising relating to the business underwritten by an insurer only to the extent that the advertising has been approved by that insurer. [IC 27-1-25-5, as added by Acts 1980, P.L. 168, § 2.]

27-1-25-6. Collection or return of premiums or charges — Fiduciary bank account — Records of deposits and withdrawals — Reasons for withdrawals. — (a) An administrator is a fiduciary in collecting or returning premiums or charges for the party with whom it has a written agreement for administrative services.

(b) Funds collected by the administrator shall be immediately remitted to the person entitled to the funds or deposited in a fiduciary bank account, which shall be established and maintained by the administrator.

(c) The administrator shall maintain records clearly showing the deposits and withdrawals from the fiduciary bank account for each party with whom it has a written agreement for administrative services. The administrator shall furnish to the party, upon his request, copies of the required records.

(d) Subject to the written agreement required by section 2 [IC 27-1-25-2] of this chapter, withdrawals from the fiduciary bank account shall only be made for the following:

- (1) Remittance to an insurer entitled to the funds.
- (2) Deposit in an account maintained in the name of the party with whom the administrator has a written agreement.
- (3) Transfer to and deposit in a claims paying account, with claims to be paid as required under section 7 [IC 27-1-25-7] of this chapter.
- (4) Payment to a group policyholder for remittance to the insurer entitled to the funds.
- (5) Payment to the administrator for its commission, fees, or charges.
- (6) Remittance of return premiums to the person entitled to the funds.

(e) An administrator may not pay any claim with money withdrawn from a fiduciary account established under subsection (b) in which premiums or charges are deposited. [IC 27-1-25-6, as added by Acts 1980, P.L. 168, § 2; 1982, P.L. 165, § 4; P.L.26-1991, § 20.]

27-1-25-7. Payment of claims on drafts authorized by user of services. — All claims paid by an administrator from funds collected on behalf of an insurer shall only be paid on drafts authorized by the insurer. All claims paid by the administrator from funds collected on behalf of an employer, an employee group, or any other group shall only be paid on drafts authorized by that party. [IC 27-1-25-7, as added by Acts 1980, P.L. 168, § 2; 1982, P.L. 165, § 5.]

27-1-25-7.5. Recoding a claim for health care services — Required notice to insured and provider. — (a) As used in this section, “administrator” means a person that administers claims for health care services under an insurance policy.

(b) As used in this section, “health care services” has the meaning set forth in IC 27-8-11-1.

(c) As used in this section, “insurance policy” means a policy that provides the kind or kinds of insurance described in Class 1(b) or Class 2(a) of IC 27-1-5-1 on an individual, group, franchise, or blanket basis or through a preferred provider plan (as defined in IC 27-8-11-1).

(d) As used in this section, “insured” means an individual entitled to coverage under an insurance policy.

(e) As used in this section, “recode” means to change a code used by a provider of health care services on a claim for covered services provided to an insured to a different classification code using the most current edition of either of the following:

(1) International Classification of Diseases.

(2) Current Procedural Terminology.

(f) An administrator may not recode a claim unless the administrator provides written notice to the insured and the provider that the administrator has recoded the claim together with:

(1) the insurer’s explanation of benefits to the insured; and

(2) an explanation of remittance to the provider of the health care services.

(g) The notification required under subsection (f) must include at least the following:

(1) An appropriate ANSI code or other reason code, or both, along with a specific description of the reasons for recoding the claim.

(2) A toll free number that the provider or the insured may use to contact the administrator to obtain additional information.

(3) The procedure that a provider may use to submit a request for a review of the initial decision to recode a claim.

(4) A list of additional information that the provider must submit in a request for a review of the initial decision to recode a claim. [P.L.207-1999, § 2; P.L.255-1999, § 2.]

27-1-25-8. Compensation of administrator. — When an administrator adjusts or settles claims under a policy, the administrator’s compensation for that policy may not be contingent on claim experience. However, the compensation for an administrator may be based on premiums or charges collected or on the number of claims paid or processed. [IC 27-1-25-8, as added by Acts 1980, P.L. 168, § 2; P.L.26-1991, § 21.]

27-1-25-9. Delivery of written communications to policyholders.

— Policies, certificates, booklets, termination notices, or other written communications delivered by an insurer to an administrator for delivery to its policyholders shall be delivered by the administrator promptly after receipt of instructions from the insurer to do so. [IC 27-1-25-9, as added by Acts 1980, P.L. 168, § 2.]

27-1-25-10. Notice to insured persons of written agreement under IC 27-1-25-2 — Statement to person paying premium. — (a) An administrator having a written agreement with an insurer shall provide written notice, which must first be approved by the insurer, to the insured

persons advising them of the relationship among the administrator, the policyholder, and the insurer.

(b) An administrator having a written agreement with an employer, an employee group, or any other group shall provide written notice, which must first be approved by that party, to the insured persons advising them of the relationship among the administrator, the policyholder, and the employer, the employee group, or any other group.

(c) When the administrator collects premiums or charges, the administrator shall state separately the amount of any premium or charge for insurance coverage specified by the insurer to the person paying the premium or charge. [IC 27-1-25-10, as added by Acts 1980, P.L. 168, § 2; 1982, P.L. 165, § 6.]

27-1-25-11. Conditions for acting as administrator — Certificate of registration — Designation of commissioner as agent for service of process. — (a) A person, other than an adjustor licensed in Indiana for the type of business for which he is acting as administrator, may not act as or hold himself out to be an administrator unless:

(1) Either:

(A) The administrator obtains a certificate of registration from the commissioner; or

(B) The commissioner has waived the requirement of a certificate under section 12 [IC 27-1-25-12] of this chapter; and

(2) If required by the commissioner, the administrator has furnished to the commissioner a bond or a cash deposit in an amount set by the commissioner under IC 4-22-2.

However, the commissioner may only require the administrator to furnish a bond or cash deposit if the commissioner makes a determination under subsection (b) that the bond or cash deposit is necessary for the protection of the public.

(b) When determining whether an administrator must furnish a bond or cash deposit under subsection (a), the commissioner shall proceed under IC 4-21.5-3.

(c) The certificate shall be issued by the commissioner, unless after a hearing conducted under IC 4-21.5-3 the commissioner determines that the administrator:

(1) Is not competent;

(2) Is not trustworthy;

(3) Is not financially responsible;

(4) Is not of good personal and business reputation; or

(5) Has had a previous application for an insurance license denied for cause within five (5) years.

In determining whether to grant a certificate of registration or to call a hearing, the commissioner may require the applicant to submit relevant documents necessary for the commissioner to make a decision.

(d) An application for a certificate of registration must be accompanied by a fifty dollar (\$50) filing fee.

(e) The certificate of registration must be renewed each year by application to the commissioner. The renewal application must be accompanied by a fifty dollar (\$50) processing fee.

(f) The commissioner may, after conducting a hearing under IC 4-21.5-3 and after finding that an administrator has either violated the requirements of section 2 or sections 4 through 10 [IC 27-1-25-2 or IC 27-1-25-4 through IC 27-1-25-10] of this chapter or is not competent, trustworthy, financially responsible, or of good personal and business reputation:

- (1) Revoke the certificate of registration of that administrator; or
- (2) Suspend the certificate of registration of that administrator.

(g) An administrator shall execute a power of attorney designating the commissioner as the agent of the administrator for purposes of service of process. [IC 27-1-25-11, as added by Acts 1980, P.L. 168, § 2; P.L.267-1987, § 4; P.L.26-1991, § 22; P.L.192-1991, § 1; P.L.1-1992, § 146.]

27-1-25-12. Waiver of requirements of IC 27-1-25-11. — The commissioner may waive the requirements of section 11 [IC 27-1-25-11] of this chapter for any person. The factors to be taken into consideration by the commissioner before granting a waiver include whether:

- (1) The person acting as administrator is primarily in a business other than that of an administrator;
- (2) The financial strength and history of the person indicates stability in its continuity of doing business; and
- (3) The regular duties being performed as administrator are of a nature that the covered persons are not likely to be injured by the granting of a waiver. [IC 27-1-25-12, as added by Acts 1980, P.L. 168, § 2; P.L.26-1991, § 23.]

27-1-25-13. Public documents — Exceptions — Confidentiality of financial information. — (a) Except as provided by section 4(b) [IC 27-1-25-4(b)] of this chapter, and except that all provisions of the written agreement between the administrator and an insurer, employer, employee group, or any other group using the services of an administrator shall be treated by the commissioner as confidential and shall not be open to any member of the public for inspection or copying, all documents submitted to the commissioner under this chapter are public documents:

- (1) When filed by the commissioner; or
- (2) Thirty (30) days after their receipt by the department.

(b) Any financial information concerning an administrator submitted by an administrator to the commissioner must remain confidential and is not open to any member of the public for inspection or copying. However, the commissioner may use the financial information in a proceeding under section 11(b) [IC 27-1-25-11(b)] of this chapter. [IC 27-1-25-13, as added by Acts 1980, P.L. 168, § 2; 1982, P.L. 165, § 7; P.L.192-1991, § 2.]

27-1-25-14. Regulations. — The commissioner may, under IC 4-22-2, adopt regulations necessary to implement this chapter. [IC 27-1-25-14, as added by Acts 1980, P.L. 168, § 2.]

27-1-25-15. Violations. — (a) An administrator acting without the certificate of registration required under section 11 [IC 27-1-25-11] of this chapter commits a Class C infraction.

(b) The commissioner shall notify the prosecuting attorney or the attorney general of Indiana of violations. [IC 27-1-25-15, as added by Acts 1980, P.L. 168, § 2.]

Cross References. Infraction and ordinance violation enforcement proceedings, IC 34-28-5.

CHAPTER 26

POLICY LANGUAGE SIMPLIFICATION

SECTION.

- 27-1-26-1. Definitions.
- 27-1-26-2. Inapplicability of chapter.
- 27-1-26-3. Minimum requirements for policies.
- 27-1-26-4. Prerequisites for compliance with this chapter of non-English language policy.
- 27-1-26-5. Determination of Flesch reading ease score.
- 27-1-26-6. Alternatives to Flesch reading ease test — Approval.

SECTION.

- 27-1-26-7. Filing of policy — Certification concerning reading ease.
- 27-1-26-8. Separate scoring of additions to policy.
- 27-1-26-9. Authorization for issuance of policy with lower score than that required.
- 27-1-26-10. Effect of other law.
- 27-1-26-11. Adoption of regulations for administration of this chapter.
- 27-1-26-12. Applicability of chapter.

27-1-26-1. Definitions. — As used in this chapter:

- (a) “Commissioner” refers to the insurance commissioner.
- (b) “Company” or “insurer” means a life or health insurance company, fraternal benefit society, prepaid health plan, dental care plan, vision care plan, pharmaceutical plan, health maintenance organization, and all similar type organizations.
- (c) “Department” refers to the insurance department.
- (d) “Policy” or “policy form” means:
 - (1) Any policy, contract, plan, or agreement of life or health insurance, including credit life insurance and credit health insurance, to be issued in Indiana by a company subject to this chapter.
 - (2) Any certificate, contract, or policy issued by a fraternal benefit society.
 - (3) Any certificate issued under a group insurance policy to be issued for delivery in Indiana.
- (e) “Text” means all printed matter except the following:
 - (1) The name and address of the insurer.
 - (2) The name, number, or title of the policy.
 - (3) The table of contents or index.
 - (4) Captions and subcaptions.
 - (5) Specification pages.
 - (6) Schedules or tables.
 - (7) Language that is drafted to conform to the requirements of federal law, regulation, or federal agency interpretation.
 - (8) Language required by a collectively bargained agreement.

(9) Medical terminology.

(10) Words that are defined in the policy.

[IC 27-1-26-1, as added by Acts 1981, P.L. 245, § 1.]

Collateral References. Policy provision action by insured against insurer. 66 limiting time within which action may be . A.L.R.4th 859.
brought on the policy as applicable to tort

27-1-26-2. Inapplicability of chapter. — (a) This chapter does not apply to:

(1) A policy that is security subject to federal jurisdiction.

(2) A group policy, other than a group credit life insurance policy or a group credit health insurance policy.

(3) A group annuity contract that serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans.

(4) A form used in connection with a policy issued for delivery on a form approved or permitted to be issued for delivery in Indiana. [IC 27-1-26-2, as added by Acts 1981, P.L. 245, § 1.]

Compiler's Notes. As enacted by Acts 1981, P.L. 245, § 1, this section contains a subsection (a) but no subsection (b).

27-1-26-3. Minimum requirements for policies. — Except as otherwise provided in this chapter, a policy issued for delivery in Indiana must meet the following minimum requirements:

(1) The text achieves a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner as provided by section 6 [IC 27-1-26-6] of this chapter.

(2) It is printed, except for specification pages, schedules, and tables, in not less than ten (10) point type, one (1) point leaded.

(3) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders.

(4) It must contain a table of contents or an index of the principal sections of the policy if:

(A) The policy has three thousand (3,000) or more words; or

(B) The policy has three (3) or more pages.

[IC 27-1-26-3, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-4. Prerequisites for compliance with this chapter of non-English language policy. — A non-English language policy that is issued for delivery in Indiana is in compliance with this chapter if the insurer issuing the policy certifies that the policy if translated into English would comply with section 3 [IC 27-1-26-3] of this chapter. [IC 27-1-26-4, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-5. Determination of Flesch reading ease score. — (a) The following procedure shall be used in determining the Flesch reading ease score:

- (1) First, a sample of the text of the policy shall be chosen for analysis:
 - (A) For policy forms containing ten thousand (10,000) or less words of text, the entire policy form shall be analyzed.
 - (B) For policy forms containing ten thousand and one (10,001) or more words of text, two (2) samples of two hundred (200) words from each page, with each sample separated by at least twenty (20) lines, may be analyzed instead of the entire form.
- (2) Second, the number of words and sentences in the text shall be counted and the total number of words shall be divided by the total number of sentences. The figure obtained shall be multiplied by a factor of one and fifteen thousandths (1.015).
- (3) Third, the total number of syllables shall be counted and divided by the total number of words. The figure obtained shall be multiplied by a factor of eighty-four and six tenths (84.6).
- (4) Fourth, the sum of the figures computed under subdivisions (2) and (3) when subtracted from two hundred six and eight hundred thirty-five thousandths (206.835) equals the Flesch reading ease score for the policy form.

(b) For the purposes of subsections (a)(2) through (4), the following rules of construction shall be used:

- (1) A contraction, hyphenated word, or numbers and letters, when separated by spaces, shall be treated as one (1) word.
- (2) A unit of words ending with a period, semicolon, or colon, but excluding headings and captions, shall be counted as a sentence.
- (3) The term "syllable" means a unit of spoken language consisting of one or more letters of a word as divided by a dictionary approved by the commissioner.
- (4) When a dictionary approved by the commissioner shows two (2) or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used. [IC 27-1-26-5, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-6. Alternatives to Flesch reading ease test — Approval. — The commissioner may approve the use of any other reading ease test as an alternative to the Flesch reading ease test if it is comparable in result to the Flesch reading ease test. [IC 27-1-26-6, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-7. Filing of policy — Certification concerning reading ease. — (a) A policy filed with the department must be accompanied by a certificate signed by an officer of the insurer stating that:

- (1) The policy meets the minimum reading ease score on the test used;
or
- (2) The score for the policy is lower than the minimum required but

should be approved in accordance with section 9 [IC 27-1-26-9] of this chapter.

(b) To confirm the accuracy of a certification under subsection (a), the commissioner may require the submission of additional information to verify the certification. [IC 27-1-26-7, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-8. Separate scoring of additions to policy. — At the option of an insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored separately. [IC 27-1-26-8, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-9. Authorization for issuance of policy with lower score than that required. — The commissioner may authorize a policy to be issued for delivery in Indiana with a score lower than the score required by section 3 [IC 27-1-26-3] of this chapter if he finds that the lower score:

- (1) Will provide a more accurate reflection of the readability of a policy form;
- (2) Is necessary because of the nature of a particular policy form or type or class of policy forms; or
- (3) Is caused by policy language that is drafted to conform to the requirements of Indiana law, regulation, or agency interpretation. [IC 27-1-26-9, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-10. Effect of other law. — A policy form meeting the requirements of this chapter shall be approved notwithstanding the requirements of any other law that specifies the contents of policies, only if the policy form provides the policyholders and claimants with protection as favorable as they are entitled to under that law. [IC 27-1-26-10, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-11. Adoption of regulations for administration of this chapter. — The commissioner may adopt regulations under IC 4-22-2 necessary to administer this chapter. [IC 27-1-26-11, as added by Acts 1981, P.L. 245, § 1.]

27-1-26-12. Applicability of chapter. — This chapter applies to all policy forms filed after June 30, 1982. A policy may not be issued for delivery in Indiana after June 30, 1985, unless approved by the commissioner or permitted to be issued under this chapter. A policy that has been approved or permitted to be issued under this chapter before July 1, 1985, and that meets the standards of this chapter does not need to be refiled for approval on July 1, 1985, but may continue being issued in Indiana upon filing with the commissioner a list of those forms, identified by form number, and accompanied by a certificate for each form as provided by section 7 [IC 27-1-26-7] of this chapter. [IC 27-1-26-12, as added by Acts 1981, P.L. 245, § 1.]

CHAPTER 27

PUBLIC ADJUSTERS

SECTION.

- 27-1-27-1. Definitions.
- 27-1-27-2. Requisites of public adjuster — Certified Public Adjuster.
- 27-1-27-3. Issuance of public adjuster's certificate — Requisites.
- 27-1-27-4. Application form requirements — Annual fee — Expiration and renewal of certificate — Surety bond.
- 27-1-27-5. Issuance of certificate to nonresident applicant — Applicant's legal representative — Service of process upon nonresident.

SECTION.

- 27-1-27-6. Written examination — Contents — Exemption of applicants.
- 27-1-27-7. Disciplinary proceedings — Sanctions.
- 27-1-27-8. Standards for competent practice of public adjusting.
- 27-1-27-9. Prohibition against adjuster's engaging in practice of law.
- 27-1-27-10. When resident certificate of authority is void.
- 27-1-27-11. Criminal penalties.

27-1-27-1. Definitions. — (a) The term “public adjuster” shall include every individual or corporation who, or which, for compensation or reward, renders advice or assistance to the insured in the adjustment of a claim or claims for loss or damages under any policy of insurance covering real or personal property and any person or corporation who, or which, advertises, solicits business, or holds itself out to the public as an adjuster of such claims. However, no public adjuster shall:

- (1) Act in any manner in relation to claims for personal injury or automobile property damage; or
- (2) Bind the insured in the settlement of claims.

(b) This chapter does not apply to, and the following are not included in the term “public adjuster”:

- (1) An attorney at law admitted to practice in the state of Indiana who adjusts insurance losses in the course of the practice of his profession.
- (2) An officer, regular salaried employee, or other representative of an insurer or of an attorney in fact of any reciprocal insurer of Lloyd's underwriter licensed to do business in Indiana who adjusts losses arising under his employer's or principal's own policies.
- (3) An adjustment bureau or association owned and maintained by insurers to adjust or investigate losses of such insurers, or any regular salaried employee who devotes substantially all of his time to the business of such bureau or association.
- (4) Any licensed agent or an authorized insurer or officer or employee of the same who adjusts losses for such insurer, and any agent or representative of a farmers' mutual insurance company operating under the farmers' mutual insurance laws of this state on behalf of an insurer.
- (5) Any independent adjuster representing an insurer.

[IC 27-1-27-1, as added by P.L.257-1983, § 1.]

Collateral References. Liability of independent or public insurance adjuster to in-

sured for conduct in adjusting claim. 50 A.L.R.4th 900.

27-1-27-2. Requisites of public adjuster — Certified Public Adjuster. — (a) No individual or corporation shall act within Indiana as a public adjuster, or receive, directly or indirectly, compensation or reward for services rendered in the adjustment of any claim or claims under the types of insurance policies set forth in section 1(a) [IC 27-1-27-1(a)] of this chapter, unless he, or it, is the holder of a certificate of authority to act as such public adjuster issued by the commissioner of insurance of the state of Indiana pursuant to this chapter.

(b) Any individual or corporation who, or which, shall have received from the commissioner of insurance a public adjuster's certificate of authority shall be styled and be known as a "Certified Public Adjuster." [IC 27-1-27-2 as added by P.L.257-1983, § 1.]

27-1-27-3. Issuance of public adjuster's certificate — Requisites. —

(a) The commissioner of insurance shall issue resident and nonresident public adjusters' certificates of authority to each person who:

- (1) Has complied with the requirements of this chapter, including the payment of fees, the completion of the examination, and, in the case of a nonresident applicant, the service of process designation;
- (2) Is at least eighteen (18) years of age; and
- (3) Has not been convicted of:
 - (A) An act which would constitute a ground for disciplinary sanction under section 7 [IC 27-1-27-7] of this chapter; or
 - (B) A felony that has a direct bearing on his ability to practice competently.

A certificate of authority may be issued to a corporation that has one (1) or more officers, directors, or employees who have been issued public adjusters' certificates of authority. However, a corporation may practice public adjusting only through its officers, directors, or employees who have been issued certificates under this chapter.

(b) The commissioner of insurance may issue a resident certificate of authority only to an applicant who is a bona fide resident of Indiana.

(c) The commissioner may issue a nonresident certificate of authority only to a nonresident of Indiana who holds an equivalent resident certificate of authority or a license issued under the laws of any other state, any territorial possession of the United States, or any foreign country. [IC 27-1-27-3, as added by P.L.257-1983, § 1.]

27-1-27-4. Application form requirements — Annual fee — Expiration and renewal of certificate — Surety bond. — (a) Each applicant for a certificate of authority as a public adjuster shall file with the commissioner of insurance his, or its, application therefor on forms furnished by the commissioner of insurance, which application shall set forth:

- (1) The name and address of the applicant, and if the applicant be a corporation, the name and address of each of its officers and directors;
- (2) Whether the person is applying as a resident or nonresident;
- (3) Whether any license or certificate of authority as agent, broker, public adjuster, or independent adjuster has been issued previously by

the commissioner of insurance of the state of Indiana or by the insurance department of any other state, any territorial possession of the United States, or any foreign country to the applicant; and

(4) The business or employment in which the applicant has been engaged for the five (5) years next preceding the date of the application, and the name and address of such business and the name or names and addresses of his employer or employers.

(b) An application for any certificate of authority must be signed and verified under oath by the applicant.

(c) An annual fee of fifty dollars (\$50) is to be paid to the commissioner of insurance by the applicant for such public adjuster's certificate of authority before the application or annual renewal thereof is granted. However, the commissioner may, by rule adopted under IC 4-22-2, change the amount of the fee to an amount necessary to pay all of the direct and indirect costs of administering this chapter. Fees collected shall be used by the department to administer this chapter.

(d) Every public adjuster's certificate of authority shall expire on December 31 of the calendar year in which the same shall have been issued, but if an application for the renewal of such certificate shall have been filed with the commissioner of insurance before January 1 of any year, the certificate of authority sought to be renewed shall continue in full force and effect until the issuance by the commissioner of insurance of the new certificate applied for or until five (5) days after the commissioner of insurance shall have refused to issue such new certificate and shall have served notice of such refusal on the applicant therefor. Service of such notice shall be made by registered mail directed to the applicant at the place of business specified in the application.

(e) The applicant shall file with the commissioner of insurance a surety bond in a sum equal to ten thousand dollars (\$10,000) payable to the state of Indiana and conditioned on the principal's faithful performance and discharge of his duties under this title and under any rule of the department of insurance. The bond must be renewed annually. [IC 27-1-27-4, as added by P.L.257-1983, § 1.]

27-1-27-5. Issuance of certificate to nonresident applicant — Applicant's legal representative — Service of process upon nonresident.

(a) The commissioner may not issue a certificate of authority to a nonresident applicant until that nonresident files with the commissioner, in a form prescribed by the commissioner, a designation of an individual resident of Indiana, a corporate resident of Indiana, or an authorized Indiana insurer as the nonresident applicant's legal representative upon whom may be served all lawful process in any action, suit, or proceeding:

- (1) instituted by or on behalf of an interested person; and
- (2) arising out of the nonresident applicant's public adjuster's insurance business.

(b) The designation required by subsection (a) constitutes an agreement that service of process upon the nonresident applicant's legal representative is of the same legal force and validity as personal service of process upon an Indiana resident.

(c) Service upon a nonresident may be made by serving the nonresident applicant's legal representative with an appropriate number of copies of the process.

(d) The nonresident applicant's legal representative shall forward a copy of the process by registered mail to the nonresident at his last known address of record or principal place of business, keeping a record of such process and service.

(e) Service of process is sufficient as long as notice of the service and a copy of the process are sent not more than ten (10) days after the nonresident applicant's legal representative received the service of process on behalf of the nonresident.

(f) Service of process upon a nonresident in any action instituted by the commissioner under this chapter shall be made by the commissioner by mailing the process to the nonresident applicant's legal representative or the nonresident by registered mail at his last known address of record or principal place of business. [IC 27-1-27-5, as added by P.L.257-1983, § 1; P.L.31-1988, § 15; P.L.116-1994, § 43; P.L.130-1994, § 33; P.L.268-1999, § 14.]

Compiler's Notes. P.L.268-1999, § 22, subsection (a), effective July 1, 1999, provides that this section, as amended by P.L.268-1999, applies "upon receipt by the commissioner of the department of insurance of the

designation from the insurer of an agent for service of process." P.L.268-1999, § 22, subsection (b), provides that P.L.268-1999, § 22, expires June 30, 2004.

27-1-27-6. Written examination — Contents — Exemption of applicants. — (a) The commissioner of insurance shall, in order to determine the competency of an applicant for a certificate of authority to act as a public adjuster, require such applicant to submit to a written examination, except such applicants who shall be entitled to such certificate without the examination as provided in this chapter. Such examinations shall be held in such place in the state of Indiana and at such time as the commissioner of insurance may designate. The examination as described in this section shall include such questions which, at the discretion of the commissioner, will properly test the applicant's knowledge and competency to engage in the adjustment of claims of an insured to include, but not be limited to the following areas:

- (1) The Indiana insurance law, IC 27.
- (2) Inventory and appraisal procedures.
- (3) Building construction.
- (4) Standard fire policy.
- (5) Insurance contracts related to claims on real or personal property.
- (6) Insurance coverage questions regarding business interruption, improvements and betterments, replacement cost coverage, concurrent and noncurrent apportionment, coinsurance, and contribution.

(b) The commissioner of insurance may issue a public adjuster's certificate of authority without examination to any individual or corporation who, or which, has transacted the business of adjusting, as a public adjuster, losses covered by policies of insurance within Indiana as his or its principal occupation or business for a period of at least one year immediately

preceding the date of application for such certificate of authority, and who, or which, the commissioner determines to be competent to act as a public adjuster. Examination shall not be required for an applicant for renewal of a certificate of authority in effect at the date the application for renewal thereof is filed. [IC 27-1-27-6, as added by P.L.257-1983, § 1.]

Collateral References. Business interruption insurance. 37 A.L.R.5th 41.

27-1-27-7. Disciplinary proceedings — Sanctions. — (a) As used in this section, “practitioner” means an individual or corporation who or which holds a certificate of authority under this chapter.

(b) A practitioner shall conduct the practice of public adjusting in accordance with the standards established by the commissioner of insurance under section 8 [IC 27-1-27-8] of this chapter and is subject to the exercise of the disciplinary sanctions under subsection (e), if after a hearing, the commissioner finds:

(1) The practitioner has employed or knowingly cooperated in fraud or material deception in order to obtain a certificate to practice public adjusting, or has engaged in fraud or material deception in the course of professional services or activities, or has advertised services in a false or misleading manner;

(2) The practitioner has been convicted of a crime which has direct bearing on the practitioner’s ability to continue to practice competently;

(3) A practitioner has knowingly violated any rule adopted by the commissioner under section 8 of this chapter;

(4) A practitioner has continued to practice although he has become unfit to practice public adjusting due to:

(A) Professional incompetence;

(B) Failure to keep abreast of current professional theory or practice;

(C) Physical or mental disability; or

(D) Addiction or severe dependency upon alcohol or other drugs which endangers the public by impairing a practitioner’s ability to practice safely;

(5) A practitioner has engaged in a course of lewd or immoral conduct in connection with the delivery of services to clients; or

(6) A practitioner has allowed his name or a certificate issued to him under this chapter to be used in connection with any individual who renders public adjusting services beyond the scope of his training, experience, or competence.

(c) The commissioner of insurance may order a practitioner to submit to a reasonable physical or mental examination if his physical or mental capacity to practice safely is at issue in a disciplinary proceeding.

(d) Failure to comply with an order under subsection (c) shall render a practitioner liable to the summary revocation procedures under subsection (f).

(e) The commissioner of insurance may impose any of the following

sanctions, singly or in combination, when he finds that a practitioner is guilty of any offense under subsection (b):

- (1) Permanently revoke a practitioner's certificate.
- (2) Suspend a practitioner's certificate.
- (3) Censure a practitioner.
- (4) Issue a letter of reprimand.
- (5) Place a practitioner on probation status and require the practitioner to:

- (A) Report regularly to the commissioner upon the matters which are the basis of probation;
- (B) Limit practice to those areas prescribed by the commissioner; or
- (C) Continue or renew professional education under a practitioner approved by the commissioner until a satisfactory degree of skill has been attained in those areas which are the basis of the probation.

The commissioner may withdraw a probation order if he finds that the deficiency which required disciplinary action has been remedied.

(f) The commissioner of insurance may summarily suspend a practitioner's certificate for a period of ninety (90) days in advance of a final adjudication or during the appeals process if the commissioner finds that a practitioner represents a clear and immediate danger to the public health and safety if he is allowed to continue to practice. The summary suspension may be renewed upon a hearing before the commissioner, and each renewal may be for a period of ninety (90) days or less.

(g) The commissioner of insurance may reinstate a certificate which has been suspended under this chapter if, after a hearing, the commissioner is satisfied that the applicant is able to practice public adjusting with reasonable skill and safety to clients. As a condition of reinstatement, the commissioner may impose disciplinary or corrective measures authorized under this chapter.

(h) The commissioner of insurance shall seek to achieve consistency in the application of the sanctions authorized in this section, and significant departures from prior decisions involving similar conduct shall be explained in the commissioner's findings or orders.

(i) The commissioner of insurance may initiate proceedings under this section on his own motion or on the verified written complaint of any interested person. All such proceedings shall be conducted in accordance with IC 4-21.5. [IC 27-1-27-7, as added by P.L.257-1983, § 1; P.L.7-1987, § 142.]

Cross References. Conviction of misdemeanor or felony, effect on license or certificate holder, IC 25-1-1.1-1.

27-1-27-8. Standards for competent practice of public adjusting.

— The commissioner of insurance shall, in the manner prescribed by IC 4-22-2, adopt standards for the competent practice of public adjusting appropriate to establish and maintain a high standard of integrity and

dignity in the profession of public adjusting. [IC 27-1-27-8, as added by P.L.257-1983, § 1.]

27-1-27-9. Prohibition against adjuster's engaging in practice of law. — A public adjuster may not:

- (1) Engage in the practice of law;
- (2) Deal directly with any claimant represented by an attorney at law without the consent of the attorney;
- (3) Advise a claimant to refrain from seeking legal advice or retaining counsel; or
- (4) In the case where legal counsel is desired by claimants, advise the retention of specific attorneys or law firms. [IC 27-1-27-9, as added by P.L.257-1983, § 1.]

27-1-27-10. When resident certificate of authority is void. — A resident certificate of authority issued to a person claiming residency is void if that person:

- (1) Holds a resident certificate of authority issued by another state;
- (2) Makes application for a resident certificate of authority from another state; or
- (3) Ceases to be a resident of Indiana.

[IC 27-1-27-10, as added by P.L.257-1983, § 1.]

27-1-27-11. Criminal penalties. — (a) A person who adjusts an insurance loss without having obtained the required certificate of authority or who adjusts an insurance loss after his certificate of authority has been cancelled, suspended, or revoked by the commissioner of insurance commits a Class B infraction.

(b) A person who makes any false statement pertaining to any matter or thing required by this chapter to be made commits a Class B infraction.

(c) A contract or agreement for compensation or services made between any insured and a public adjuster for any loss suffered by the insured which occurred in Indiana is void unless the public adjuster, at the time of the making of the contract or agreement, has a certificate of authority issued by the commissioner of insurance under this chapter.

(d) This section does not limit the authority of the commissioner of insurance to suspend, revoke, place on probation, or refuse to issue a certificate of authority. [IC 27-1-27-11, as added by P.L.257-1983, § 1.]

Cross References. Infraction and ordinance violation enforcement proceedings, IC 34-28-5.

CHAPTER 28

[RESERVED.]

Compiler's Notes. There is no chapter 28 (IC 27-1-28) in this article. IC 27-1-29 was added by P.L. 162-1986, § 1. Chapter 28 has been set out as reserved by the compiler.

CHAPTER 29

INDIANA POLITICAL SUBDIVISION RISK MANAGEMENT COMMISSION

SECTION.

- 27-1-29-1. "Commission" defined.
- 27-1-29-2. "Fund" defined.
- 27-1-29-3. "Liability" defined.
- 27-1-29-4. "Political subdivision" defined.
- 27-1-29-5. Creation — Appointment of members — Terms of office — Qualifications — Vacancies — Compensation — Tax exemption for property.
- 27-1-29-6. Meetings and voting.
- 27-1-29-7. General powers — Annual report.
- 27-1-29-8. Payment of expenses.
- 27-1-29-9. Liability insurance or indemnification.
- 27-1-29-10. Establishment of fund — Administration — Use and disposition of money — Reserve account.

SECTION.

- 27-1-29-11. Eligibility for membership in fund.
- 27-1-29-12. Assessment upon fund members.
- 27-1-29-13. Payment of fund members' liabilities.
- 27-1-29-14. Limitations upon payments from fund.
- 27-1-29-15. Procedure for becoming member of fund — Relinquishing membership.
- 27-1-29-16. Initial appointment of members — Adoption of rules.
- 27-1-29-17. Bonds and notes.
- 27-1-29-27.1. Adoption of code of ethics.
- 27-1-29-28. Authority of commission to cease operation of fund.

27-1-29-1. "Commission" defined. — As used in this chapter, "commission" refers to the Indiana political subdivision risk management commission established by this chapter. [P.L.162-1986, § 1.]

27-1-29-2. "Fund" defined. — As used in this chapter, "fund" refers to the political subdivision risk management fund established by this chapter. [P.L.162-1986, § 1.]

27-1-29-3. "Liability" defined. — As used in this chapter, "liability" means an obligation arising from a claim for the payment of money in an amount established under IC 34-13-3 (or IC 34-4-16.5 before its repeal) or any other claim for which coverage is provided for members of the fund under rules adopted by the commission. [P.L.162-1986, § 1; P.L.1-1998, § 141.]

27-1-29-4. "Political subdivision" defined. — As used in this chapter, "political subdivision" has the meaning set forth in IC 34-6-2-110. [P.L.162-1986, § 1; P.L.5-1988, § 143; P.L.1-1998, § 142.]

27-1-29-5. Creation — Appointment of members — Terms of office — Qualifications — Vacancies — Compensation — Tax exemption for property. — (a) The Indiana political subdivision risk management commission is created as a separate body corporate and politic, constituting an instrumentality of the state for the public purposes set out in this chapter, but not a state agency. The commission is separate from the state in its corporate and sovereign capacity. The purpose of the commission is aiding political subdivisions in protecting themselves against liabilities. The commission is not subject to IC 27-6-8, and the Indiana guaranty association created by IC 27-6-8-5 has no obligation to insureds or claimants of the commission.

(b) The commission consists of the insurance commissioner, who shall serve as chairman, and ten (10) other commission members. Except for the commissioner, the members of the commission shall be appointed by the governor for a term of four (4) years. No more than five (5) commission members appointed by the governor under this section may be members of the same political party. The commission members appointed by the governor under this section must include one (1) resident of each congressional district in Indiana. The commission shall elect one (1) of the appointed commission members as secretary of the commission.

(c) The initial appointments of commission members are for the following terms:

- (1) Three (3) members appointed for a term of one (1) year.
- (2) Three (3) members appointed for a term of two (2) years.
- (3) Two (2) members appointed for a term of three (3) years.
- (4) Two (2) members appointed for a term of four (4) years.

A commission member may be reappointed to the commission.

(d) In appointing commission members under this section, the governor shall consider the qualifications, expertise, and background that would provide the proper talent to administer this chapter. To the degree possible, the members must have backgrounds in educational administration, risk management, and governance of a political subdivision and must include persons with knowledge of insurance matters.

(e) A vacancy occurring on the commission shall be filled through the appointment of a resident of the same congressional district as the vacating commission member for the unexpired term of the commission member leaving the commission.

(f) Each member of the commission who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). Such a commission member is also entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency.

(g) Each member of the commission who is a state employee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the commission member's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the state budget agency.

(h) All property of the commission is public property devoted to an essential public and governmental function and purpose and is exempt from all taxes and special assessments of the state or a political subdivision of the state. [P.L.162-1986, § 1; P.L.272-1987, § 1.]

27-1-29-6. Meetings and voting. — The commission shall meet upon the call of the commissioner, who shall convene meetings as often as necessary to accomplish the purposes of this chapter. The commission may act:

- (1) Through the vote of a majority of members at a meeting at which at least six (6) members are present; or

(2) Through the commissioner, pursuant to powers granted to the commission under this chapter and delegated to the commissioner by the vote of a majority of members at a meeting at which at least six (6) members are present. [P.L.162-1986, § 1.]

27-1-29-7. General powers — Annual report. — (a) The commission is granted all powers necessary, convenient, or appropriate to carry out and effectuate its public and corporate purposes under this chapter and IC 27-1-29.1 including, but not limited to, and except as otherwise restricted in this chapter or IC 27-1-29.1:

- (1) The power to have perpetual existence as a body corporate and politic, and an independent instrumentality, but not a state agency, exercising essential public functions.
 - (2) The power to sue and be sued.
 - (3) The power to adopt and alter an official seal.
 - (4) The power to make and enforce bylaws and rules for the conduct of its business, which bylaws and rules may be adopted by the commission without complying with IC 4-22-2.
 - (5) The power to make contracts and incur liabilities, borrow money, issue its negotiable bonds or notes in accordance with this chapter, subject to provisions for registration of negotiable bonds and notes, and provide for and secure their payment and provide for the rights of their holders, and purchase and hold and dispose of any of its bonds or notes.
 - (6) The power to acquire, hold, use, and dispose of its income, revenues, funds, and money.
 - (7) The power to acquire, rent, lease, hold, use, and dispose of property for its purposes.
 - (8) The power to fix and revise from time to time and charge and collect fees and charges for the use of its services or facilities.
 - (9) The power to accept gifts or grants of property, funds, money, materials, labor, supplies, or services from the United States, any governmental unit, or any person, carry out the terms or provisions or make agreements with respect to the gifts or grants, and do all things necessary, useful, desirable, or convenient in connection with procuring, accepting, or disposing of the gifts or grants.
 - (10) The power to do anything authorized by this article, through its officers, agents, or employees or by contracts with a person.
 - (11) The power to procure insurance against any losses in connection with its property, operations, or assets in amounts and from insurers as it considers desirable.
 - (12) The power to cooperate with and exchange services, personnel, and information with any federal, state, or local government agency.
- (b) The commission may:
- (1) implement a statewide program of loss control and risk management to minimize the liabilities of members of the fund;
 - (2) contract with any persons or entities to obtain or provide the services of risk managers, actuaries, loss control specialists, attorneys, and other professionals in carrying out its powers and duties under this chapter and to pay for those services from the fund;

- (3) exercise control over the defense of members of the fund against tort claims, including the selection and retention of legal counsel, the direction of counsel in the conduct of cases, and the negotiation and acceptance or rejection of any settlement;
- (4) establish procedures by which political subdivisions can gain or regain membership and relinquish membership in the fund;
- (5) establish procedures and criteria for the imposition of assessments to be paid by members of the fund, and the payment of members' liabilities;
- (6) establish programs for the payment of money from the fund to compensate members for damage to or loss of real or personal property;
- (7) establish programs for the payment of:
 - (A) liabilities covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal); and
 - (B) liabilities that are not covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal), including, but not limited to, liability due to alleged violations of the Constitution of the United States or federal civil rights statutes by law enforcement officers;
- (8) establish programs by which members can protect their elected officers and employees against liability arising from their alleged errors or omissions;
- (9) establish procedures by which a member of the fund can settle small claims that are within the deductible provision of coverage under the fund;
- (10) capitalize the fund by levying against each member of the fund an annual surcharge over and above the assessment imposed against the member under section 12 [IC 27-1-29-12] of this chapter; and
- (11) establish any other programs or procedures the commission considers necessary for the implementation of this chapter.

The amount of the surcharge levied against a member of the fund for a particular year under subdivision (10) may not exceed twenty-five percent (25%) of the member's assessment for the same year.

(c) The commission shall file a report with the members of the general assembly each year concerning the operations of the commission and the condition of the fund. [P.L.162-1986, § 1; P.L.272-1987, § 2; P.L.1-1998, § 143.]

27-1-29-8. Payment of expenses. — (a) All expenses incurred by the commission in administering the fund under this chapter shall be paid from the fund.

(b) All expenses incurred by the commission in administering the political subdivision catastrophic liability fund established by IC 27-1-29.1 shall be paid from the political subdivision catastrophic liability fund.

(c) All expenses incurred by the commission that are not incurred directly in connection with the administration of the political subdivision risk management fund or the political subdivision catastrophic liability fund shall be paid equally from each fund. [P.L.162-1986, § 1; P.L.272-1987, § 3.]

27-1-29-9. Liability insurance or indemnification. — (a) The commission shall purchase liability insurance for, or otherwise indemnify, its members against personal liability for acts and omissions arising out of their performance, in good faith, of their duties as members of the commission.

(b) The state is not responsible for the payment of any obligation of the commission. [P.L.162-1986, § 1.]

27-1-29-10. Establishment of fund — Administration — Use and disposition of money — Reserve account. — (a) The political subdivision risk management fund is established for the purpose of:

(1) Paying the liabilities of political subdivisions to the extent specified in this chapter;

(2) Receiving assessments paid by political subdivisions to replenish the fund and to pay the principal of and interest on bonds or notes issued by the commission under section 17(b)(2) [IC 27-1-29-17(b)(2)] of this chapter; and

(3) Receiving money from any other source.

(b) The fund shall be administered by the commission.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) All money received by the commission under this chapter, whether as assessments, proceeds from the sale of bonds, or revenues, are trust funds, to be held and applied solely as provided in this chapter. Current operating funds shall be kept in depositories selected by the commission. The commission shall deposit with the treasurer of state the money in the fund not currently needed to meet the obligations of the fund, and the treasurer of state shall invest such money for the commission in accordance with the provisions of any resolution or trust agreement that the commission adopts or enters into under this chapter. Interest that accrues from these investments shall be credited to the commission and to the fund.

(e) Money in the fund at the end of a particular fiscal year does not revert to the state general fund.

(f) The commission shall create a reserve account in the fund and shall capitalize the reserve account through the surcharges levied under section 7(b)(10) [IC 27-1-29-7(b)(10)] of this chapter. [P.L.162-1986, § 1; P.L.272-1987, § 4.]

27-1-29-11. Eligibility for membership in fund. — All political subdivisions are eligible for membership in the fund. Each member of the fund:

(1) Shall contribute to the fund in the amount of the assessment charged the member under this chapter;

(2) Shall pay the annual surcharge levied against the member under this chapter; and

(3) Is entitled to payment of its liabilities from the fund under this chapter. [P.L.162-1986, § 1.]

27-1-29-12. Assessment upon fund members. — (a) The commission shall impose an assessment to be paid by each member of the fund. The

assessments to be paid by members of the fund shall be set in fairness to all members, based upon the uniform application of actuarial principles and underwriters' rating principles. A member shall pay its assessment in accordance with rules of the commission.

(b) The assessment for the first twelve (12) months of a political subdivision's membership in the fund shall be no greater than the payment made by the political subdivision to a commercial insurer for like coverage for the twelve (12) month period immediately preceding the political subdivision's application to become a member. In the case of an applicant not insured by a commercial insurer, the commission shall set the amount of the assessment for the first twelve (12) months of membership in accordance with subsection (a). [P.L.162-1986, § 1.]

27-1-29-13. Payment of fund members' liabilities. — (a) The commission shall pay liabilities of members of the fund in accordance with rules established by the commission.

(b) Payment from the fund for any liability covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal) or for any other liability designated under rules adopted by the commission is primary coverage in relation to the following:

- (1) Any insurance policy issued to a member of the fund that, by its terms, provides coverage secondary to coverage provided through membership in the fund.
- (2) A fund member's own program of self insurance.

Payment of a liability identified in this subsection must be made within the limits set forth in section 14(b) [IC 27-1-29-14(b)] of this chapter and irrespective of the existence of an insurance policy described in subdivision (1) or of a self insurance program described in subdivision (2). [P.L.162-1986, § 1; P.L.1-1998, § 144.]

27-1-29-14. Limitations upon payments from fund. — (a) In order to be eligible for payment under this chapter, a liability of a political subdivision must arise out of a claim based upon an act or omission that takes place while the political subdivision is a member of the fund.

(b) The maximum amount payable from the fund for any liability, whether or not it is covered under IC 34-13-3 (or IC 34-4-16.5 before its repeal), is:

- (1) three hundred thousand dollars (\$300,000) for injury, death, or damage suffered by any one (1) person as a result of the act or omission from which the liability arises; and
- (2) one million dollars (\$1,000,000) for all injury, death, or damage suffered by all persons as a result of the act or omission from which the liability arises.

(c) No amount may be paid from the fund in respect of punitive damages paid by or assessed against a member of the fund.

(d) No amount may be paid from the fund in the case of a liability based upon bodily injury or property damage arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis,

toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water unless the discharge, dispersal, release, or escape:

(1) is caused by an act or omission of a political subdivision that is a member of the fund; and

(2) occurs as a result of:

(A) a household hazardous waste; or

(B) a conditionally exempt small quantity generator (as described in 40 CFR 261.5(a));

collection, disposal, or recycling project conducted by or controlled by the political subdivision.

(e) The commissioner may pay a liability of a member of the fund in a series of annual payments. The amount of any annual payment under this subsection must be one hundred thousand dollars (\$100,000) or more, except for the final payment in a series of payments.

(f) The commission may negotiate a structured settlement of any claim.

(g) As used in this section, "household hazardous waste" means solid waste generated by households that consists of or contains a material that is:

(1) ignitable, as described in 40 CFR 261.21;

(2) corrosive, as described in 40 CFR 261.22;

(3) reactive, as described in 40 CFR 261.23; or

(4) toxic, as described in 40 CFR 261.24.

[P.L.162-1986, § 1; P.L.273-1987, § 1; P.L.256-1995, § 1; P.L.1-1998, § 145.]

27-1-29-15. Procedure for becoming member of fund — Relinquishing membership. — (a) A political subdivision may become a member of the fund by filing a written notice of its intent to become a member with the commission by the date exactly six (6) months before the expiration date of the liability insurance policy covering the political subdivision on December 31, 1986.

(b) Each political subdivision that files a notice of intent to become a member of the fund by the date set forth in subsection (a) shall be granted membership in the fund. A political subdivision that files a notice of intent to become a member after the date set forth in subsection (a) may be admitted to or rejected for membership in the fund at the discretion of the commission.

(c) A rule adopted by the commission to establish the procedures described in section 7(b)(4) [IC 27-1-29-7(b)(4)] of this chapter may not provide that a political subdivision continues to be a member of the fund more than twelve (12) months after the political subdivision gives notice to the commissioner of its intention to relinquish its membership.

(d) After relinquishing its membership in the fund, a political subdivision remains liable for its pro rata share of assessments to pay for liabilities of fund members that arose out of claims based upon acts or omissions that took place while the political subdivision was a member of the fund. If a political subdivision fails to pay an assessment to which it is subject under

this chapter, the commission may give notice to any department or agency of the state (including the treasurer of state or the auditor of state) that is the custodian of money payable to the delinquent political subdivision after the date of the notice, that the political subdivision is in default on the payment of an assessment under this chapter. After receiving this notice, the department or agency shall withhold the delinquent amount from money payable to the political subdivision and pay over the money to the commission to be applied against the delinquent assessment. [P.L.162-1986, § 1; P.L.272-1987, § 5; P.L.273-1987, § 2.]

27-1-29-16. Initial appointment of members — Adoption of rules.

— (a) The governor shall appoint the initial members of the commission by May 1, 1986.

(b) The commission shall adopt rules under IC 4-22-2 for the implementation of this chapter by October 1, 1986, and shall adopt other rules as required after that date. [P.L.162-1986, § 1.]

27-1-29-17. Bonds and notes. — (a) As used in this section:

(1) “basic fund” refers to the political subdivision risk management fund established by this chapter; and

(2) “catastrophic fund” refers to the political subdivision catastrophic liability fund established by IC 27-1-29.1.

(b) The commission may issue its bonds or notes in amounts that it considers necessary to provide funds to:

(1) establish or maintain the reserve account in the catastrophic fund provided for in IC 27-1-29.1-8;

(2) provide for the payment of liabilities payable out of the basic fund to the extent such liabilities exceed the money in the basic fund; and

(3) pay, fund, or refund, regardless of when due, the principal of or interest or redemption premiums on bonds or notes issued under subdivision (1) or (2).

Bonds or notes issued under subdivision (2) must mature within three (3) years after their date of issuance.

(c) The bonds or notes of the commission may be issued and sold by the commission to the Indiana bond bank under IC 5-1.5.

(d) Every issue of bonds or notes is an obligation of the commission. An issue of bonds or notes under subsection (b)(1) is payable solely from assessments imposed by the commission under IC 27-1-29.1 on political subdivisions that are members of the catastrophic fund, and the commission may secure such bonds or notes by a pledge of assessments imposed under IC 27-1-29.1. An issue of bonds or notes under subsection (b)(2) is payable solely from assessments imposed by the commission under section 12 [IC 27-1-29-12] of this chapter on political subdivisions that are members of the basic fund, and the commission may secure such bonds or notes by a pledge of assessments imposed under section 12 of this chapter.

(e) A bond or note of the commission:

(1) is not a debt, liability, loan of credit, or pledge of the faith and credit of the state; and

(2) must contain on its face a statement that the commission is obligated to pay principal and interest, and the redemption premium, if any, and that the faith, credit, and taxing power of the state are not pledged to the payment of the bond or note.

(f) The state pledges to and agrees with the holders of the bonds or notes issued under this chapter that the state will not:

- (1) limit or restrict the rights vested in the commission to fulfill the terms of any agreement made with the holders of its bonds or notes; or
- (2) in any way impair the rights or remedies of the holders of the bonds or notes;

until the bonds or notes, together with the interest on the bonds or notes, and interest on unpaid installments of interest, and all costs and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met, paid, and discharged.

(g) The bonds or notes of the commission are negotiable instruments for all purposes of IC 26-1, subject only to the provisions of the bonds and notes for registration.

(h) Bonds or notes of the commission must be authorized by resolution of the commission, may be issued in one (1) or more series, and must:

- (1) bear the date;
- (2) mature at the time or times;
- (3) be in the denomination;
- (4) be in the form;
- (5) carry the conversion or registration privileges;
- (6) have the rank or priority;
- (7) be executed in the manner;
- (8) be payable from the sources in the medium of payment at the place inside or outside the state; and
- (9) be subject to the terms of redemption;

as the resolution of the commission or the trust agreement securing the bonds or notes provides.

(i) Bonds or notes may be issued under this chapter without obtaining the consent of any agency of the state and without any other proceeding or condition other than the proceedings or conditions specified in this chapter.

(j) The rate or rates of interest on the bonds or notes may be fixed or variable. Variable rates shall be determined in the manner and in accordance with the procedures set forth in the resolution authorizing the issuance of the bonds or notes. Bonds or notes bearing a variable rate of interest may be converted to bonds or notes bearing a fixed rate or rates of interest, and bonds or notes bearing a fixed rate or rates of interest may be converted to bonds or notes bearing a variable rate of interest, to the extent and in the manner set forth in the resolution pursuant to which the bonds or notes are issued. The interest on bonds or notes may be payable semiannually or annually or at any other interval or intervals as may be provided in the resolution, or the interest may be compounded and paid at maturity or at any other times as may be specified in the resolution.

(k) The bonds or notes may be made subject, at the option of the holders, to mandatory redemption by the commission at the times and under the circumstances set forth in the authorizing resolution.

(l) Bonds or notes of the commission may be sold at public or private sale at such price, either above or below the principal amount, as the commission fixes. If bonds or notes of the commission are to be sold at public sale, the commission shall comply with IC 5-1-11 and shall publish notice of the sale in accordance with IC 5-3-1-2 in two (2) newspapers published and of general circulation in Indianapolis.

(m) The commission may periodically issue its notes under this chapter and pay and retire the principal of the notes, pay the interest due on the notes, or fund or refund the notes from proceeds of bonds or of other notes or from other funds or money of the commission available for that purpose in accordance with a contract between the commission and the holders of the notes.

(n) The commission may secure any bonds or notes issued under this chapter by a trust agreement by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside Indiana.

(o) The trust agreement or the resolution providing for the issuance of the bonds or notes may contain provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as are reasonable and proper and not in violation of law.

(p) The trust agreement or resolution may set forth the rights and remedies of the holders of any bonds or notes and of the trustee and may restrict the individual right of action by the holders.

(q) In addition to the provisions of subsections (n) through (p), any trust agreement or resolution may contain other provisions the commission considers reasonable and proper for the security of the holders of any bonds or notes.

(r) All expenses incurred in carrying out the provisions of the trust agreement or resolution may be paid from assessments, revenues, or assets pledged or assigned to the payment of the principal of and the interest on bonds and notes or from any other funds available to the commission.

(s) Notwithstanding the restrictions of any other law, all financial institutions, investment companies, insurance companies, insurance associations, executors, administrators, guardians, trustees, and other fiduciaries may legally invest sinking funds, money, or other funds belonging to them or within their control in bonds or notes issued under this chapter.

(t) All bonds or notes issued under this chapter are issued by a body corporate and politic of this state, but not a state agency, and for an essential public and government purpose and the bonds and notes, the interest thereon, the proceeds received by a holder from the sale of the bonds or notes to the extent of the holder's cost of acquisition, proceeds received upon redemption before maturity, and proceeds received at maturity, and the receipt of the interest and proceeds are exempt from taxation in Indiana for all purposes except the financial institutions tax imposed under IC 6-5.5 or a state inheritance tax imposed under IC 6-4.1. [P.L.272-1987, § 6; P.L.21-1990, § 52; P.L.254-1997(ss), § 25.]

27-1-29-27.1. Adoption of code of ethics. — (a) The commission shall:

(1) adopt:

(A) rules under IC 4-22-2; or

(B) a policy;

establishing a code of ethics for its employees; or

(2) decide it wishes to be under the jurisdiction and rules adopted by the state ethics commission.

(b) A code of ethics adopted by rule or policy under this section must be consistent with state law and approved by the governor. [P.L.5-1996, § 19.]

Compiler's Notes. There are no sections
IC 27-1-29-18 — IC 27-1-29-27 in this chapter.

27-1-29-28. Authority of commission to cease operation of fund. —

(a) As used in this section, "fund" means the political subdivision risk management fund established by section 10 [IC 27-1-29-10] of this chapter.

(b) Notwithstanding any other provision of this chapter, the commission:

(1) with the approval of the insurance commissioner; and

(2) upon a determination by the commission that:

(A) membership in the fund is declining; and

(B) financial conditions warrant the action;

is authorized to take action under subsection (c).

(c) Under the circumstances set forth in subsection (b), the commission may do the following with respect to the fund:

(1) Prevent any political subdivision that is not already a member of the fund from becoming a member.

(2) Decline to renew the membership of the political subdivisions that are members of the fund.

(3) When the membership of the last member has expired, cease the operation of the fund, except for:

(A) the payment of liabilities of former members of the fund; and

(B) the collection of assessments from former members of the fund, if any are due;

in accordance with this chapter and rules adopted by the commission.

(4) Allow or cause a partial reduction or complete depletion of the balance of the fund through:

(A) the payment of liabilities of former members of the fund; and

(B) at the discretion of the commission, and with the approval of the commissioner, the pro rata return to former members of assessments paid by former members of the fund;

in accordance with this chapter and rules adopted by the commission.

(d) After any or all of the actions authorized by subsection (c), the commission, with the approval of the insurance commissioner, may resume using the fund to pay the liabilities of members of the fund under this chapter. [P.L.103-1998, § 1.]

CHAPTER 29.1

POLITICAL SUBDIVISION CATASTROPHIC LIABILITY FUND

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SECTION.

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- 27-1-29.1-21. Liability subsequent to membership — Delinquent assessments.
- 27-1-29.1-22. Assessments.

27-1-29.1-1. "Commission" defined. — As used in this chapter, "commission" refers to the Indiana political subdivision risk management commission established by IC 27-1-29-5. [P.L.272-1987, § 7.]

27-1-29.1-2. "Fund" defined. — As used in this chapter "fund" refers to the political subdivision catastrophic liability fund established by this chapter. [P.L.272-1987, § 7.]

27-1-29.1-3. "Liability" defined. — As used in this chapter, "liability" means an obligation arising from:

- (1) multiple claims for the payment of money that are within the limits set forth in IC 34-13-3-4 (or IC 34-4-16.5-4 before its repeal) and that arise from a single catastrophic occurrence; or
- (2) any other claim for which coverage is provided for members of the fund under rules adopted by the commission. [P.L.272-1987, § 7; P.L.1-1998, § 146.]

27-1-29.1-4. "Member" defined. — As used in this chapter "member" refers to any political subdivision that has a membership in the fund, as provided in section 9 [IC 27-1-29.1-9] of this chapter. [P.L.272-1987, § 7.]

27-1-29.1-5. "Political subdivision" defined. — As used in this chapter, "political subdivision" has the meaning set forth in IC 34-6-2-110. [P.L.272-1987, § 7; P.L.3-1989, § 152; P.L.1-1998, § 147.]

27-1-29.1-6. "Underlying coverage" defined. — As used in this chapter, "underlying coverage" refers to any liability insurance policy that names a member of the fund or its officials or employees as a named insured, an additional named insured, an insured, or an additional insured. [P.L.272-1987, § 7.]

27-1-29.1-7. Establishment of fund — Purpose — Administration — Deposit — Investment. — (a) The political subdivision catastrophic liability fund is established for the purpose of:

- (1) Paying a part of certain liabilities of members of the fund under this chapter;
- (2) Receiving assessments paid by fund members to replenish the fund and to pay the principal of the interest on bonds or notes issued by the commission under IC 27-1-29-17(b)(1); and
- (3) Receiving money from any other source.

(b) The fund shall be administered by the commission, using the powers granted in IC 27-1-29-7, as modified by this chapter.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) All money received by the commission under this chapter, whether as assessments, proceeds from the sale of bonds, or revenues, are trust funds, to be held and applied solely as provided in this chapter. Current operating funds shall be kept in depositories selected by the commission. The commission shall deposit with the treasurer of state the money in the fund not currently needed to meet the obligations of the fund, and the treasurer of state shall invest such money for the commission in accordance with the provisions of any resolution or trust agreement that the commission may adopt or enter into under this chapter or IC 27-1-29. Interest that accrues from these investments shall be credited to the commission and to the fund.

(e) Money in the fund at the end of a fiscal year does not revert to the state general fund. [P.L.272-1987, § 7; P.L.159-1988, § 1.]

27-1-29.1-8. Reserve account. — (a) The commission shall establish a reserve account in the fund. A balance of at least five million dollars (\$5,000,000) must remain in the reserve account. To provide money to establish the reserve account, the commission may issue bonds under IC 27-1-29-17(b)(1). The bonds issued to provide money for the establishment of the reserve account may not exceed a total amount of forty million dollars (\$40,000,000).

(b) Money in the reserve account shall be held and applied solely to pay claims against the fund that cannot be paid from other money in the fund. [P.L.272-1987, § 7.]

27-1-29.1-9. Membership generally. — All political subdivisions that satisfy the criteria for membership under the rules of the commission are eligible for membership in the fund. A political subdivision is not required to be a member of the political subdivision risk management fund under IC 27-1-29 to be eligible for membership in the fund established by this chapter. Each member of the fund:

- (1) Shall contribute to the fund in the amount of the assessment charged the member under this chapter; and
- (2) Is entitled to the partial payment of certain liabilities from the fund under this chapter. [P.L.272-1987, § 7.]

27-1-29.1-10. Partial payment generally. — (a) The commissioner, using money from the fund, shall pay a part of every liability that qualifies for partial payment under this chapter and under the terms of the coverage provided by the commission according to rules adopted under this chapter.

(b) A liability of a member of the fund that has no underlying coverage or that has occurrence basis underlying coverage qualifies for partial payment under this chapter if it:

- (1) Is a liability covered under the coverage document issued by the commission to the member;
- (2) Arises out of an act or omission that takes place while the political subdivision bearing the liability is a member of the fund; and
- (3) Satisfies the minimum total amount requirement set forth in section 12 [IC 27-1-29.1-12] of this chapter.

(c) A liability of a member of the fund that has claims made basis underlying coverage qualifies for partial payment under this chapter if it:

- (1) Is a liability covered under the coverage document issued by the commission to the member;
- (2) Arises out of an act or omission with respect to which a claim is made while the political subdivision bearing the liability is a member of the fund;
- (3) Is covered by the underlying coverage; and
- (4) Satisfies the minimum total amount requirement set forth in section 12 of this chapter.

(d) For the purposes of subsection (c)(2) and section 11 [IC 27-1-29.1-11] of this chapter, the question of when and how a claim is made shall be determined by the provisions of the insurance policy providing the underlying coverage. However, if the underlying coverage is not applicable to a liability, a claim is considered to have been made for purposes of subsection (c)(2) when notice of a claim giving rise to the liability is received by the fund member from the claimant or the claimant's representative. [P.L.272-1987, § 7; P.L.159-1988, § 2.]

27-1-29.1-11. Partial payment — Liability prior to membership. — A liability that arises out of an act or omission that takes place before the political subdivision bearing the liability becomes a member of the fund does not qualify for partial payment under this chapter unless the liability:

- (1) Is expressly covered by the provisions of a coverage document that:
 - (A) Is issued to the fund member; and
 - (B) Is in effect when the claim is made; and
- (2) Is also covered by the underlying coverage that is claims made basis coverage. [P.L.272-1987, § 7.]

27-1-29.1-12. Partial payment — Membership under IC 27-1-29. — (a) A liability of a member of the fund that is not a member of the political subdivision risk management fund under IC 27-1-29 does not qualify for partial payment under this chapter unless the total amount of the liability exceeds:

- (1) One million dollars (\$1,000,000); or

(2) Another sum that is:

(A) Greater than one million dollars (\$1,000,000); and

(B) Approved by the commission as a provision of the fund member's coverage because the fund member has underlying coverage with limits of liability that exceed one million dollars (\$1,000,000).

(b) A liability of a member of the fund that is also a member of the political subdivision risk management fund under IC 27-1-29 does not qualify for partial payment under this chapter unless the amount of the liability exceeds the amount of liability payable by the commission under IC 27-1-29 under the terms of the coverage document that is issued to the fund member and applicable to the liability. [P.L.272-1987, § 7.]

27-1-29.1-13. Partial payment — Formula. — The amount that is to be paid by the commission toward the satisfaction of a liability qualifying for partial payment under this chapter is determined in STEP FOUR of the following formula:

STEP ONE: If the total amount of the liability exceeds five million dollars (\$5,000,000), subtract five million dollars (\$5,000,000) from the total amount of the liability.

STEP TWO: Add the remainder under STEP ONE to the minimum total amount figure that applies to the liability under section 12 [IC 27-1-29.1-12] of this chapter.

STEP THREE: Add to the sum determined under STEP TWO the total amount expended by the commission under section 16 [IC 27-1-29.1-16] of this chapter in defending the member of the fund against claims giving rise to the liability.

STEP FOUR: Subtract the sum determined under STEP THREE from the total amount of the liability. [P.L.272-1987, § 7.]

27-1-29.1-14. Coverage as excess. — The coverage of a liability under this chapter is excess of any and all other valid and collectible insurance and coverage under liability risk management, risk sharing, and risk financing pools or funds. [P.L.272-1987, § 7.]

27-1-29.1-15. Method of payment. — An amount payable under section 13 [IC 27-1-29.1-13] of this chapter that is no more than ten thousand dollars (\$10,000) may be paid in a single, immediate payment. An amount payable under section 13 of this chapter that is greater than ten thousand dollars (\$10,000) shall be paid:

(1) In installments under section 18(c) [IC 27-1-29.1-18(c)] of this chapter; or

(2) Under a structured settlement negotiated under section 18(d) [IC 27-1-29.1-18(d)] of this chapter. [P.L.272-1987, § 7.]

27-1-29.1-16. Defense — Expenses. — The commission may associate with a member of the fund in the defense of a claim and, if no defense is provided by the insurer providing the fund member's underlying coverage, the commission may defend the member and control that defense. Amounts

expended by the commission from the fund under this section must be deducted under section 13 [IC 27-1-29.1-13] of this chapter from the amount to be paid by the commission toward the satisfaction of a liability. [P.L.272-1987, § 7.]

27-1-29.1-17. Semi-annual payments. — On June 30 and December 31 of every year, the commission shall recognize every liability that has qualified for partial payment under this section during the six (6) month period that ended on that day. The commission shall pay the part of each liability that is payable under section 13 [IC 27-1-29.1-13] of this chapter within fifteen (15) days after the liability is recognized as qualifying for partial payment. However, if the balance in the fund is insufficient to pay the full payable amount of every liability that has qualified for partial payment during a six (6) month period, the commission shall pay a prorated portion of each liability that qualified for partial payment during the period. Any part of the payable amount of a liability left unpaid due to the prorating of payments under this subsection must be paid before the payment of liabilities that qualify for partial payment during any of the following six (6) month periods. [P.L.272-1987, § 7.]

27-1-29.1-18. Limitations on payments. — (a) No amount may be paid from the fund in respect of punitive damages paid by or assessed against a member of the fund.

(b) No amount may be paid from the fund in the case of a liability based upon bodily injury or property damage arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids, gases, waste materials, or other irritants, contaminants, or pollutants into or upon land, the atmosphere, or any watercourse or body of water unless the discharge, dispersal, release, or escape:

(1) Is caused by an act or omission of a political subdivision that is a member of the fund; and

(2) Occurs as a result of:

(A) A household hazardous waste; or

(B) A conditionally exempt small quantity generator (as described in 40 CFR 261.5(a)(1));

collection, disposal, or recycling project conducted by or controlled by the political subdivision.

(c) The commissioner may pay a liability of a member of the fund in a series of annual payments. The amount of any annual payment under this subsection based upon the injury to or death of one (1) person in any one (1) occurrence must be one hundred thousand dollars (\$100,000) or more, except for the final payment in a series of payments.

(d) The commission may negotiate a structured settlement of any claim.

(e) As used in this section, "household hazardous waste" means solid waste generated by households that consists of or contains a material that is:

(1) Ignitable, as described in 40 CFR 261.21;

(2) Corrosive, as described in 40 CFR 261.22;

(3) Reactive, as described in 40 CFR 261.23; or

(4) Toxic, as described in 40 CFR 261.24.

[P.L.272-1987, § 7; P.L.256-1995, § 2.]

Compiler's Notes. The bracketed parenthesis was inserted by the compiler in subsection (b)(2)(B) for purposes of clarity.

27-1-29.1-19. Membership — Notice of intent. — (a) A political subdivision may become a member of the fund by filing a written notice of its intent to become a member with the commission by the latter of the following dates:

(1) December 31, 1987.

(2) The date exactly six (6) months before the expiration date of the liability insurance policy covering the political subdivision on December 31, 1987.

(b) Each political subdivision that files a notice of intent to become a member by the latter of the two (2) dates set forth in subsection (a) shall be granted membership in the fund. A political subdivision that files a notice of intent to become a member after the latter of the two (2) dates set forth in subsection (a) may be admitted to or rejected for membership in the fund at the discretion of the commission. [P.L.272-1987, § 7.]

27-1-29.1-20. Adoption of rules. — (a) The commission shall adopt rules under IC 4-22-2 to implement this chapter.

(b) The commission, in accordance with the rules adopted under subsection (a), may, in whole or in part, conform or limit the coverage provided to a member of the fund under this chapter (as described in the coverage document issued to the member by the commission) with the provisions of insurance policies providing underlying coverage to the fund member.

(c) In accordance with the rules adopted under subsection (a), the commission may provide, to a member of the fund that is not a member of the political subdivision risk management fund under IC 27-1-29, coverage of a liability that exceeds the amount of one million dollars (\$1,000,000) but that is subject to reduction by exhaustion of the aggregate limits of liability in the fund member's underlying coverage.

(d) In accordance with the rules adopted under subsection (a), the commission may provide, to a member of the fund that is also a member of the political subdivision risk management fund under IC 27-1-29, coverage of liabilities for which no coverage is provided under IC 27-1-29.

(e) Except as otherwise specifically provided in this chapter, the commission has the same powers in the administration of the fund as it has in the administration of the political subdivision risk management fund under IC 27-1-29-7(b). A rule adopted by the commission to establish the procedure by which a political subdivision can withdraw from membership in the fund may not provide that a political subdivision continues to be a member of the fund more than twelve (12) months after the political subdivision gives notice to the commissioner of its intention to relinquish its membership. [P.L.272-1987, § 7.]

27-1-29.1-21. Liability subsequent to membership — Delinquent assessments. — After relinquishing its membership in the fund, a political subdivision remains liable for its pro rata share of assessments to pay for liabilities of fund members that arose out of claims based upon acts or omissions that took place while the political subdivision was a member of the fund. If a political subdivision fails to pay an assessment to which it is subject under this chapter, the commission may give notice to any department or agency of the state (including the treasurer of state or the auditor of state) that is the custodian of money payable to the delinquent political subdivision after the date of the notice, that the political subdivision is in default on the payment of an assessment under this chapter. After receiving this notice, the department or agency shall withhold the delinquent amount from the money payable to the political subdivision and pay over the money to the commission to be applied against the delinquent assessment. [P.L.272-1987, § 7.]

27-1-29.1-22. Assessments. — (a) The commission shall impose an assessment to be paid by each member of the fund. The assessments to be paid by members of the fund shall be determined by the commission and must be fair to all members, in consideration of the uniform application of actuarial principles and underwriters' rating principles and in consideration of the need to pay the principal of and interest on bonds or notes issued under IC 27-1-29-17(b)(1). A member shall pay its assessment in accordance with rules of the commission.

(b) The assessment for the first twelve (12) months of a political subdivision's membership in the fund shall be no greater than the payment made by the political subdivision to a commercial insurer for like coverage for the twelve (12) month period immediately preceding the political subdivision's application to become a member. In the case of an applicant not insured by a commercial insurer, the department shall set the amount of the assessment for the first twelve (12) months of membership in accordance with subsection (a). [P.L.272-1987, § 7.]

CHAPTER 30

GROUP CASUALTY AND LIABILITY INSURANCE FOR FOSTER PARENTS

SECTION.

- 27-1-30-1. [Repealed.]
- 27-1-30-2. "Casualty and liability insurance" defined.
- 27-1-30-3. "Casualty insurance company" defined.

SECTION.

- 27-1-30-4. "Foster parent" defined.
- 27-1-30-5. Authority to provide insurance — Limitation.
- 27-1-30-6. Regulations.

27-1-30-1. [Repealed.]

Compiler's Notes. This section, defining "boarding home for children", was repealed by

P.L.2-1992, § 897, effective February 14, 1992, and by P.L.20-1992, § 47, and P.L.81-

1992, § 40, effective July 1, 1992. For a definition of “foster family home”, see IC 12-7-2-90.

27-1-30-2. “Casualty and liability insurance” defined. — As used in this chapter, “casualty and liability insurance” means the types of insurance described in IC 27-1-5-1, Class 2(h) and 2(l). [P.L.270-1987, § 2.]

27-1-30-3. “Casualty insurance company” defined. — As used in this chapter, “casualty insurance company” has the meaning set forth in IC 27-1-2-3(t). [P.L.270-1987, § 2.]

27-1-30-4. “Foster parent” defined. — As used in this chapter, “foster parent” means a person who holds a license to operate a foster family home under IC 12-17.4. [P.L.270-1987, § 2; P.L.99-1988, § 24; P.L.2-1992, § 782; P.L.81-1992, § 35; P.L.1-1993, § 200; P.L.61-1993, § 64.]

27-1-30-5. Authority to provide insurance — Limitation. — An insurer authorized under IC 27-1-3-20 to transact business as a casualty insurance company may provide casualty and liability insurance to foster parents on a group basis. A policy may not be issued or renewed to provide group coverage under this chapter to a group that includes fewer than ten (10) members. [P.L.270-1987, § 5.]

27-1-30-6. Regulations. — The insurance commissioner may promulgate regulations under IC 4-22-2 that he considers necessary for the proper administration of this chapter. [P.L.270-1987, § 2.]

CHAPTER 31

CANCELLATION AND NONRENEWAL OF COMMERCIAL PROPERTY AND CASUALTY INSURANCE

SECTION.

- 27-1-31-1. Applicability of chapter.
27-1-31-2. Cancellation of policies in effect
more than 90 days.

SECTION.

- 27-1-31-2.5. Cancellation of policies in effect
90 days or less.
27-1-31-3. Notice of nonrenewal.

27-1-31-1. Applicability of chapter. — (a) Except as provided in subsection (b), this chapter applies to all lines of commercial property and casualty insurance.

(b) This chapter:

- (1) does not apply to the cancellation or nonrenewal of automobile insurance policies, as restricted under IC 27-7-6; and
- (2) does not affect requirements applying to:
 - (A) the cancellation of medical malpractice insurance policies under IC 34-18-13-4 (or IC 27-12-13-4 before its repeal); or
 - (B) the cancellation of property or liability insurance by a creditor under IC 24-4.5-4-304. [P.L.271-1987, § 4; P.L.2-1993, § 149; P.L.224-1993, § 1; P.L.1-1998, § 148.]

Collateral References. 43 Am. Jur. 2d, Insurance, § 380 et seq.

45 C.J.S., Insurance, § 485 et seq.

Damages for Wrongful Cancellation of Liability and Property Insurance, 34 A.L.R.3d 385.

Fire insurance: Failure to disclose prior fires affecting insured's property as ground for avoidance of policy. 4 A.L.R.5th 117.

27-1-31-2. Cancellation of policies in effect more than 90 days. — (a) An insurer may not cancel a policy of insurance that the insurer has written that has been in effect more than ninety (90) days unless:

- (1) The insured under the policy has failed to pay the premium;
- (2) There is a substantial change in the scale of risk covered by the policy;
- (3) The insured has perpetrated a fraud or material misrepresentation upon the insurer;
- (4) The insured has failed to comply with reasonable safety recommendations; or
- (5) Reinsurance of the risk associated with the policy has been cancelled.

(b) An insurer shall provide a written notice of cancellation to a person insured under a policy issued by the insurer at least:

- (1) Forty-five (45) days before cancelling the policy for any reason set forth in subsection (a)(2), (a)(4), or (a)(5);
- (2) Twenty (20) days before cancelling the policy for the reason set forth in subsection (a)(3); or
- (3) Ten (10) days before cancelling the policy for the reason set forth in subsection (a)(1). [P.L.271-1987, § 4; P.L.162-1988, § 3.]

27-1-31-2.5. Cancellation of policies in effect 90 days or less. — An insurer may cancel a policy of insurance that the insurer has written that has been in effect ninety (90) days or less by providing a written notice of cancellation to a person insured under the policy at least:

- (1) Ten (10) days before cancelling if an insured has failed to pay a premium;
- (2) Twenty (20) days before cancelling if the insured has perpetrated a fraud or material misrepresentation upon the insurer; or
- (3) Thirty (30) days before cancelling for any other reason.

[P.L.162-1988, § 4.]

27-1-31-3. Notice of nonrenewal. — If an insurer refuses to renew a policy of insurance written by the insurer, the insurer shall provide written notice of nonrenewal to the insured:

- (1) At least forty-five (45) days before the expiration date of the policy, if the coverage provided is for one (1) year, or less; or
- (2) At least forty-five (45) days before the anniversary date of the policy, if the coverage provided is for more than one (1) year. [P.L.271-1987, § 4.]

CHAPTER 32

MANAGING GENERAL AGENTS; MULTIPLE EMPLOYER
WELFARE ARRANGEMENTS**27-1-32-1 — 27-1-32-11. [Repealed.]**

Compiler's Notes. This chapter, one version of which was added by P.L.26-1991, § 17, concerning managing general agents, and one version of which was added by P.L.191-1991, § 5, concerning multiple employer welfare

arrangements, was repealed by P.L.1-1992, § 147, effective February 21, 1992. For present similar provisions, see IC 27-1-33 and IC 27-1-34, respectively.

CHAPTER 33

MANAGING GENERAL AGENTS

SECTION.

- 27-1-33-1. "Actuary" defined.
- 27-1-33-2. "Commissioner" defined.
- 27-1-33-3. "Insurer" defined.
- 27-1-33-4. "Managing general agent" and "MGA" defined.
- 27-1-33-5. "Underwrite" defined.
- 27-1-33-6. Managing general agent authority — Bond — Errors and omissions policy.
- 27-1-33-7. Requirement of written contract.
- 27-1-33-8. Independent financial examination — Loss reserves — On-

SECTION.

- site review — Binding authority for reinsurance contracts — Appointment for termination of MGA — Quarterly review of books — Eligibility to serve on board of directors — Insurance holding company system.
- 27-1-33-9. Acts of MGA as acts of insurer.
- 27-1-33-10. Penalties for violation of chapter.
- 27-1-33-11. Rules adopted by commissioner.

27-1-33-1. "Actuary" defined. — As used in this chapter, "actuary" means a person who is a member in good standing of the American Academy of Actuaries. [P.L.1-1992, § 148.]

Collateral References. 43 Am. Jur. 2d, 44 C.J.S., Insurance, § 178 et seq.
Insurance, § 108 et seq.

27-1-33-2. "Commissioner" defined. — As used in this chapter, "commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2. [P.L.1-1992, § 148.]

27-1-33-3. "Insurer" defined. — As used in this chapter, "insurer" means any person, firm, association, or corporation duly authorized to act in Indiana as an insurance company pursuant to IC 27-1. [P.L.1-1992, § 148.]

27-1-33-4. "Managing general agent" and "MGA" defined. — (a) As used in this chapter, "managing general agent" or "MGA" means any person, firm, association, or corporation:

- (1) That manages all or part of the insurance business of an insurer (including the management of a separate division, department, or underwriting office);
- (2) That acts as an agent for the insurer, whether known as a managing general agent, manager, or other similar term;
- (3) That, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an

amount of gross direct written premium at least five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year; and

(4) That does at least one (1) of the following activities related to the business produced:

(A) Adjusts or pays claims in excess of an amount determined by the commissioner.

(B) Negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding subsection (a), the following persons are not MGAs for the purposes of this chapter:

(1) An employee of the insurer.

(2) A United States manager of the United States branch of an alien insurer.

(3) An underwriting manager that, pursuant to contract:

(A) Manages all or part of the insurance operations of the insurer;

(B) Is under common control with the insurer, subject to IC 27-1-23; and

(C) Is not compensated based on the volume of premiums written.

(4) An attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer as authorized in IC 27-6-6-1 or an interinsurance exchange as authorized in IC 27-1-2-2 under powers of attorney.

[P.L.1-1992, § 148; P.L.116-1994, § 44; P.L.130-1994, § 34.]

27-1-33-5. "Underwrite" defined. — As used in this chapter, "underwrite" means the authority to accept or reject risk on behalf of the insurer. [P.L.1-1992, § 148.]

27-1-33-6. Managing general agent authority — Bond — Errors and omissions policy. — (a) A person, a firm, an association, or a corporation may not act in the capacity of an MGA with respect to risks located in Indiana for an insurer licensed in Indiana unless that person is a licensed producer in Indiana.

(b) A person, a firm, an association, or a corporation may not act in the capacity of an MGA representing an insurer domiciled in Indiana with respect to risks located outside Indiana unless that person is licensed as a producer in Indiana pursuant to the provisions of this chapter. For the purposes of this subsection, a person is licensed as a producer in Indiana if that person holds a nonresident license.

(c) The commissioner may require a bond in an amount determined by the commissioner for the protection of the insurer.

(d) The commissioner may require an MGA to maintain an errors and omissions policy. [P.L.1-1992, § 148.]

27-1-33-7. Requirement of written contract. — A person, a firm, an association, or a corporation acting in the capacity of an MGA may not place business with an insurer unless there is in force a written contract between the parties. A contract required by this section must set forth the responsibilities of each party and, where both parties share responsibility for a

particular function, specify the division of those responsibilities. The contract must, at a minimum, contain provisions that state the following:

(1) The insurer may terminate the contract for cause upon written notice to the MGA and may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

(2) The MGA will:

- (A) render accounts to the reinsurer detailing all transactions; and
- (B) remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in a bank that is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer. The MGA may retain not more than three (3) months estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the MGA shall be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the MGA in a form usable to the commissioner.

(5) The contract may not be assigned in whole or part by the MGA.

(6) Appropriate underwriting guidelines, including the following:

- (A) The maximum annual premium volume.
- (B) The basis of the rates to be charged.
- (C) The types of risks which may be written.
- (D) Maximum limits of liability.
- (E) Applicable exclusions.
- (F) Territorial limitations.
- (G) Policy cancellation provisions.
- (H) The maximum policy period.

(7) The insurer has the right to cancel or nonrenew any policy of insurance subject to the applicable laws and regulations concerning the cancellation and nonrenewal of insurance policies.

(8) If the contract permits the MGA to settle claims on behalf of the insurer, the following apply:

- (A) All claims must be reported to the company in a timely manner.
- (B) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

- (i) has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

- (ii) involves a coverage dispute;

- (iii) may exceed the MGA's claims settlement authority;

- (iv) is open for more than six (6) months; or

- (v) is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(C) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer, those files shall

become the sole property of the insurer or its estate. The MGA shall have reasonable access to and the right to copy the files on a timely basis.

(D) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(9) Where electronic claims files are in existence, the contract must address the timely transmission of the data in those files.

(10) If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA:

(A) until one (1) year after the profits are earned, for property insurance business, and five (5) years after the profits are earned on casualty business; and

(B) until the profits have been verified pursuant to section 8 [IC 27-1-33-8] of this chapter.

(11) An MGA may not do any of the following:

(A) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

(B) Commit the insurer to participate in insurance or reinsurance syndicates.

(C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed.

(D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which may not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year before the payment or commitment.

(E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer.

(F) Permit its subproducer to serve on the insurer's board of directors.

(G) Jointly employ an individual who is employed with the insurer, unless the MGA and the insurer are affiliated in an insurance holding company system.

(H) Appoint a sub-MGA.

27-1-33-8. Independent financial examination — Loss reserves — On-site review — Binding authority for reinsurance contracts — Appointment for termination of MGA — Quarterly review of books — Eligibility to serve on board of directors — Insurance holding company system. — (a) An insurer shall have on file an independent financial examination, in a form acceptable to the commissioner, of each MGA with which it has done business.

(b) If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This requirement is in addition to any other required loss reserve certification.

(c) The insurer shall periodically (at least semiannually) conduct an on-site review of the underwriting and claims processing operations of the MGA.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the MGA.

(e) Within thirty (30) days after entering into or terminating a contract with an MGA, the insurer shall provide written notification of the appointment or termination to the commissioner. Notices of appointment of an MGA must include a statement of duties that the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(f) An insurer shall review its books and records each quarter to determine if any producer (as defined by section 4 [IC 27-1-33-4] of this chapter) has become, by operation of section 4 of this chapter, an MGA. If the insurer determines that a producer has become an MGA pursuant to section 4 of this chapter, the insurer shall promptly notify the producer and the commissioner of that determination, and the insurer and producer shall fully comply with the provisions of this chapter within thirty (30) days.

(g) An insurer shall not appoint to its board of directors an officer, a director, an employee, a subproducer, or a controlling shareholder of its MGAs. This subsection does not apply to relationships governed by IC 27-1-23.

(h) An insurance holding company system regulated under IC 27-1-23 may perform the obligations imposed by this section for insurers affiliated in the system by submitting, in a form acceptable to the commissioner, consolidated information concerning the MGAs with whom the insurers have done business. [P.L.1-1992, § 148; P.L.116-1994, § 45.]

27-1-33-9. Acts of MGA as acts of insurer. — The acts of the MGA are considered to be the acts of the insurer on whose behalf the MGA is acting. An MGA may be examined as if it were the insurer. [P.L.1-1992, § 148.]

27-1-33-10. Penalties for violation of chapter. — (a) If the commissioner determines that the MGA or any other person has not materially

complied with this chapter or any rule or order adopted under this chapter, after notice and opportunity to be heard:

(1) The commissioner may order:

(A) For each separate violation, a civil penalty in an amount not exceeding five thousand dollars (\$5,000); and

(B) The revocation or suspension of the producer's license; and

(2) If it is found that because of such material noncompliance the insurer has suffered any loss or damage, the commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer has been entered under IC 27-9 and the receiver appointed under that order determines that the MGA or any other person has not materially complied with this chapter or any rule or order adopted under this chapter and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

(c) Nothing contained in this section affects the right of the commissioner to impose any other penalties provided for by law.

(d) Nothing contained in this chapter is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors. [P.L.1-1992, § 148; P.L.116-1994, § 46; P.L.130-1994, § 35.]

27-1-33-11. Rules adopted by commissioner. — The commissioner may adopt reasonable rules under IC 4-22-2 for the implementation and administration of this chapter. [P.L.1-1992, § 148.]

CHAPTER 34

MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

SECTION.

27-1-34-1. "Arrangement" and "multiple employer welfare arrangement" defined.

27-1-34-2. Certificate of registration required.

27-1-34-3. Filing and approval required.

27-1-34-4. Annual statement.

27-1-34-5. Applicability of insurance law.

SECTION.

27-1-34-6. Examination by department.

27-1-34-7. Failure to notify department of insolvency — Penalty.

27-1-34-8. Certificate of registration required for dealings with reinsurer or agent.

27-1-34-9. Rules adopted by department.

27-1-34-10. Exempt arrangements.

27-1-34-1. "Arrangement" and "multiple employer welfare arrangement" defined. — (a) As used in this chapter, "arrangement" refers to a multiple employer welfare arrangement.

(b) As used in this chapter, "multiple employer welfare arrangement" means an entity other than a duly admitted insurer that establishes an employee benefit plan for the purpose of offering or providing accident and sickness or death benefits to the employees of at least two (2) employers,

including self-employed individuals and their dependents. [P.L.1-1992, § 149.]

27-1-34-2. Certificate of registration required. — (a) An arrangement must annually obtain a certificate of registration from the department under rules adopted by the commissioner.

(b) An arrangement that does not obtain a certificate of registration described in subsection (a) or violates the requirements of this chapter is subject to IC 27-4. [P.L.1-1992, § 149.]

27-1-34-3. Filing and approval required. — An arrangement may provide benefits under an employee benefit plan in Indiana only through an employee benefit plan that has been filed and approved by the department of insurance. [P.L.1-1992, § 149.]

27-1-34-4. Annual statement. — An arrangement shall file an annual statement on a form prescribed by the commissioner. [P.L.1-1992, § 149.]

27-1-34-5. Applicability of insurance law. — Except as provided by this chapter and by IC 27-9, Indiana insurance law does not apply to the operation of multiple employer welfare arrangements. [P.L.1-1992, § 149.]

27-1-34-6. Examination by department. — (a) It shall be the duty of the department to examine every domestic multiple employer welfare arrangement at least every five (5) years or as often as the department in its discretion may deem necessary. The expense of the examination and or investigations of such arrangements shall be paid by the arrangement so examined.

(b) The commissioner shall revoke or suspend:

(1) The certificate of registration to do business in Indiana of any multiple employer welfare arrangement which refuses to permit such examination described in subsection (a); and

(2) Any certificate of registration when any condition prescribed by law or regulation for the issuance or continuance of the certificate no longer exists. [P.L.1-1992, § 149.]

27-1-34-7. Failure to notify department of insolvency — Penalty. — If any domestic multiple employer welfare arrangement is insolvent or in imminent danger of insolvency, or fails or suspends operation between periods of examination authorized, it is a Class A misdemeanor for the highest officer then actively in charge of such multiple employer welfare arrangement to knowingly fail to notify the department immediately of such condition, failure, or suspension. [P.L.1-1992, § 149.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

27-1-34-8. Certificate of registration required for dealings with reinsurer or agent. — (a) A reinsurer may not issue a policy of insurance to a multiple employer welfare arrangement that does not have a certificate of registration from the department.

(b) An agent licensed by the department may not solicit, offer, or provide coverage through a multiple employer welfare arrangement that does not have a certificate of registration from the department.

(c) A reinsurer or agent who knows or reasonably should have known that the arrangement does not have a current certificate of registration is liable for any claims for benefits that are due and unpaid. [P.L.1-1992, § 149.]

27-1-34-9. Rules adopted by department. — The department of insurance shall adopt rules under IC 4-22-2 necessary to implement this chapter, including but not limited to:

- (1) certificate of registration requirements;
- (2) Reinsurance requirements;
- (3) Reserve levels;
- (4) Deposits;
- (5) Financial reporting;
- (6) Fidelity bonds; and
- (7) The operations;

of multiple employer welfare arrangements. [P.L.1-1992, § 149.]

27-1-34-10. Exempt arrangements. — This chapter does not apply to a multiple employer welfare arrangement which offers or provides benefits which are fully insured by an authorized insurer or to an arrangement which is exempt under the federal Employee Retirement Income Security Act (29 U.S.C. 1001 et seq.). [P.L.1-1992, § 149.]

CHAPTER 35

BUSINESS TRANSACTED WITH PRODUCER CONTROLLED PROPERTY AND CASUALTY INSURERS

SECTION.

- 27-1-35-1. Applicability.
- 27-1-35-2. "Accredited state" defined.
- 27-1-35-3. "Captive insurer" defined.
- 27-1-35-4. "Control" defined — "Controlled" defined.
- 27-1-35-5. "Controlled insurer" defined.
- 27-1-35-6. "Controlling producer" defined.
- 27-1-35-7. "Licensed insurer" defined — "Insurer" defined.
- 27-1-35-8. "Producer" defined.
- 27-1-35-9. Applicability — Amount of premiums.
- 27-1-35-10. Nonapplicability of IC 27-1-35-11 through IC 27-1-35-14.

SECTION.

- 27-1-35-11. Contract between controlling producer and controlled insurer.
- 27-1-35-12. Audit committee.
- 27-1-35-13. Annual report on loss ratios and reserves.
- 27-1-35-14. Annual report on commissions.
- 27-1-35-15. Notice of relationship between producer and controlled insurer.
- 27-1-35-16. Order to cease business.
- 27-1-35-17. Civil action — Intervention.
- 27-1-35-18. Sanctions.
- 27-1-35-19. Other penalties — Rights.

27-1-35-1. Applicability. — This chapter applies to licensed insurers either domiciled in Indiana or domiciled in a state that is not an accredited state having in effect a substantially similar law. All provisions of the

Insurance Holding Company System Regulation Act, to the extent the provisions are not superseded by this chapter, continue to apply to all parties within holding company systems subject to this chapter. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-2. "Accredited state" defined. — As used in this chapter, "accredited state" means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established periodically by the National Association of Insurance Commissioners (NAIC). [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-3. "Captive insurer" defined. — As used in this chapter, "captive insurer" means an insurance company owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies, or in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks of any of the following:

- (1) Member organizations.
- (2) Group members and their affiliates.
- (3) Member organizations and group members and their affiliates.

[P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-4. "Control" defined — "Controlled" defined. — As used in this chapter, "control" or "controlled" has the meaning set forth in IC 27-1-23-1. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-5. "Controlled insurer" defined. — As used in this chapter, "controlled insurer" means a licensed insurer that is controlled, directly or indirectly, by a producer. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-6. "Controlling producer" defined. — As used in this chapter, "controlling producer" means a producer that, directly or indirectly, controls an insurer. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-7. "Licensed insurer" defined — "Insurer" defined. — As used in this chapter, "licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact a property/casualty insurance business in Indiana. The following are not licensed insurers for the purposes of this chapter:

- (1) All risk retention groups (as defined in the Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), the Risk Retention Act, 15 U.S.C. Section 3901 et seq. (1982 & Supp. 1986), and IC 27-7-10-11).
- (2) All residual market pools and joint underwriting authorities or associations.
- (3) All captive insurers.

[P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-8. “Producer” defined. — As used in this chapter, “producer” means an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-9. Applicability — Amount of premiums. — The provisions of sections 11 through 14 [IC 27-1-35-11 through IC 27-1-35-14] of this chapter apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurer’s quarterly statement filed as of September 30 of the prior year. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-10. Nonapplicability of IC 27-1-35-11 through IC 27-1-35-14. — Notwithstanding section 9 [IC 27-1-35-9] of this chapter, the provisions of sections 11 through 14 [IC 27-1-35-11 through IC 27-1-35-14] of this chapter do not apply if:

(1) The controlling producer:

- (A) Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer’s holding company system, or the controlled insurer’s parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with such insurance; and
- (B) Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and

(2) The controlled insurer, except for insurance business written through a residual market facility accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-11. Contract between controlling producer and controlled insurer. — A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the controlled insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the controlled insurer and contains the following minimum provisions:

- (1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.
- (2) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information nec-

essary to support all commissions, charges, and other fees received by or owing to the controlling producer.

(3) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments of premiums collected shall be remitted not later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract.

(4) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one (1) or more appropriately identified bank accounts in banks that are members of the Federal Reserve System, in accordance with the provisions of the insurance law as applicable. However, funds of a controlling producer not required to be licensed in Indiana shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract shall not be assigned in whole or in part by the controlling producer.

(7) The controlled insurer shall provide the controlling producer with the controlled insurer's underwriting standards, rules, and procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) The rates and terms of the controlling producer's commissions, charges, or other fees, and the purposes for those charges or fees. The rates of the commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of this subdivision and subdivision (7), examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified under section 13 [IC 27-1-35-13] of this chapter.

(10) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or sub-line of business. The controlled

insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if the controlling producer has been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate but shall not bind reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts under obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines, including for both reinsurance assumed and ceded a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-12. Audit committee. — Each controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner to review the adequacy of the insurer's loss reserves. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-13. Annual report on loss ratios and reserves. — In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary or such other independent loss reserve specialist acceptable to the commissioner reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year end (including incurred but not reported) on business placed by the producer. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-14. Annual report on commissions. — The controlled insurer shall annually report to the commissioner the amount of commissions paid to the producer, the percentage this amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kind of insurance. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-15. Notice of relationship between producer and controlled insurer. — A producer, before the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the producer and the controlled insurer, except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the subproducer that the subproducer is aware of

the relationship between the insurer and the producer and that the subproducer has or will notify the insured. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-16. Order to cease business. — If the commissioner believes that the controlling producer or any other person has not materially complied with this chapter or any rule or order adopted under this chapter, after notice and opportunity to be heard, the commissioner may order the controlling producer to cease placing business with the controlled insurer. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-17. Civil action — Intervention. — If the commissioner finds that because of a material noncompliance under section 16 [IC 27-1-35-16] of this chapter the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder or other appropriate relief. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-18. Sanctions. — If an order for liquidation or rehabilitation of the controlled insurer has been entered under IC 27-9, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with this chapter or any rule or order adopted under this chapter, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

27-1-35-19. Other penalties — Rights. — Sections 16 through 18 [IC 27-1-35-16 through IC 27-1-35-18] of this chapter do not:

- (1) Affect the right of the commissioner to impose any other penalties provided by Indiana law; or
- (2) In any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties. [P.L.116-1994, § 47; P.L.130-1994, § 36.]

CHAPTER 36

RISK BASED CAPITAL REQUIREMENTS

SECTION.

- 27-1-36-1. Exemption from chapter.
- 27-1-36-2. "Adjusted RBC report" defined.
- 27-1-36-3. "Authorized control level event" defined.
- 27-1-36-4. "Authorized control level RBC" defined.
- 27-1-36-5. "Company action level event" defined.
- 27-1-36-6. "Company action level RBC" defined.

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- 27-1-36-7. "Corrective order" defined.
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- 27-1-36-9. "Foreign insurer" defined.
- 27-1-36-10. "Life and health insurer" defined.
- 27-1-36-11. "Mandatory control level event" defined.
- 27-1-36-12. "Mandatory control level RBC" defined.
- 27-1-36-13. "NAIC" defined.
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- 27-1-36-15. "Property and casualty insurer" defined.
- 27-1-36-16. "RBC" defined.
- 27-1-36-17. "RBC instructions" defined.
- 27-1-36-18. "RBC level" defined.
- 27-1-36-19. "RBC plan" defined.
- 27-1-36-20. "RBC report" defined.
- 27-1-36-21. "Regulatory action level event" defined.
- 27-1-36-22. "Regulatory action level RBC" defined.
- 27-1-36-23. "Revised RBC plan" defined.
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- 27-1-36-38. Retention of experts and consultants.
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- 27-1-36-47. Use of instructions, reports, and plans.
- 27-1-36-48. Applicability of other laws.
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- 27-1-36-51. Mandatory control level event occurring with foreign insurer — Liquidation of property in Indiana.
- 27-1-36-52. Notice — Time of effect.
- 27-1-36-53. Immunity.
- 27-1-36-54. Severability.
- 27-1-36-55. Adoption of rules.
- 27-1-36-56. Excess capital.

27-1-36-1. Exemption from chapter. — The commissioner may exempt from the application of this chapter a domestic property and casualty insurer that:

- (1) writes direct business only in Indiana;
- (2) receives annual premiums from direct business written of not more than two million dollars (\$2,000,000); and
- (3) assumes no reinsurance in excess of five percent (5%) of direct business written. [P.L.186-1996, § 1.]

27-1-36-2. "Adjusted RBC report" defined. — As used in this chapter, "adjusted RBC report" means an RBC report that has been adjusted by the commissioner under section 28 [IC 27-1-36-28] of this chapter. [P.L.186-1996, § 1.]

27-1-36-3. "Authorized control level event" defined. — As used in this chapter, "authorized control level event" has the meaning set forth in section 39 [IC 27-1-36-39] of this chapter. [P.L.186-1996, § 1.]

27-1-36-4. "Authorized control level RBC" defined. — As used in this chapter, the "authorized control level RBC" means, with respect to an insurer, the number determined under the risk-based capital formula in accordance with the RBC instructions. [P.L.186-1996, § 1.]

27-1-36-5. "Company action level event" defined. — As used in this chapter, "company action level event" has the meaning set forth in section 29 [IC 27-1-36-29] of this chapter. [P.L.186-1996, § 1.]

27-1-36-6. "Company action level RBC" defined. — As used in this chapter, "company action level RBC" means, with respect to an insurer, the product of two (2) multiplied by the insurer's authorized control level RBC. [P.L.186-1996, § 1.]

27-1-36-7. "Corrective order" defined. — As used in this chapter, "corrective order" means an order issued by the commissioner that specifies the corrective actions that the commissioner determines are required. [P.L.186-1996, § 1.]

27-1-36-8. "Domestic insurer" defined. — As used in this chapter, "domestic insurer" means any insurance company that is domiciled in Indiana. [P.L.186-1996, § 1.]

27-1-36-9. "Foreign insurer" defined. — As used in this chapter, "foreign insurer" means an insurer that:

- (1) is licensed to do business in Indiana under IC 27-1-17; but
- (2) is not a domestic insurer.

[P.L.186-1996, § 1.]

27-1-36-10. "Life and health insurer" defined. — As used in this chapter, "life and health insurer" means:

- (1) an insurer that makes one (1) or more of the types of insurance described in Class 1 of IC 27-1-5-1; or
- (2) a property and casualty insurer that writes only accident and health insurance. [P.L.186-1996, § 1.]

27-1-36-11. "Mandatory control level event" defined. — As used in this chapter, "mandatory control level event" has the meaning set forth in section 41 [IC 27-1-36-41] of this chapter. [P.L.186-1996, § 1.]

27-1-36-12. "Mandatory control level RBC" defined. — As used in this chapter, "mandatory control level RBC" means, with respect to an insurer, the product of seven-tenths (.7) multiplied by the insurer's authorized control level RBC. [P.L.186-1996, § 1.]

27-1-36-13. "NAIC" defined. — As used in this chapter, "NAIC" refers to the National Association of Insurance Commissioners. [P.L.186-1996, § 1.]

27-1-36-14. "Negative trend" defined. — As used in this chapter, "negative trend" means, with respect to a life and health insurer, a negative trend over a period of time, as determined in accordance with the trend test calculation included in the RBC instructions. [P.L.186-1996, § 1.]

27-1-36-15. “Property and casualty insurer” defined. — As used in this chapter, “property and casualty insurer” means an insurer that is authorized to make one (1) or more of the types of insurance described in Class 2 and Class 3 of IC 27-1-5-1. The term does not include the following:

- (1) Monoline mortgage guaranty insurers.
- (2) Financial guaranty insurers.
- (3) Title insurers.

[P.L.186-1996, § 1.]

27-1-36-16. “RBC” defined. — As used in this chapter, “RBC” refers to risk based capital. [P.L.186-1996, § 1.]

27-1-36-17. “RBC instructions” defined. — As used in this chapter, “RBC instructions” means the RBC report including risk based capital instructions adopted by the NAIC, as amended by the NAIC. [P.L.186-1996, § 1.]

27-1-36-18. “RBC level” defined. — As used in this chapter, “RBC level” means an insurer’s:

- (1) company action level RBC;
- (2) regulatory action level RBC;
- (3) authorized control level RBC; or
- (4) mandatory control level RBC.

[P.L.186-1996, § 1.]

27-1-36-19. “RBC plan” defined. — As used in this chapter, “RBC plan” means a comprehensive financial plan containing the elements specified in section 30 [IC 27-1-36-30] of this chapter. [P.L.186-1996, § 1.]

27-1-36-20. “RBC report” defined. — As used in this chapter, “RBC report” means the report required by section 25 [IC 27-1-36-25] of this chapter. [P.L.186-1996, § 1.]

27-1-36-21. “Regulatory action level event” defined. — As used in this chapter, “regulatory action level event” has the meaning set forth in section 35 [IC 27-1-36-35] of this chapter. [P.L.186-1996, § 1.]

27-1-36-22. “Regulatory action level RBC” defined. — As used in this chapter, “regulatory action level RBC” means, with respect to an insurer, the product of one and five-tenths (1.5) multiplied by the insurer’s authorized control level RBC. [P.L.186-1996, § 1.]

27-1-36-23. “Revised RBC plan” defined. — As used in this chapter, “revised RBC plan” means the revised RBC plan that an insurer must prepare, with or without the commissioner’s recommendation, if the commissioner rejects the insurer’s previous RBC plan. [P.L.186-1996, § 1.]

27-1-36-24. “Total adjusted capital” defined. — As used in this chapter, “total adjusted capital” means the sum of:

(1) an insurer's statutory capital and surplus determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under IC 27-1-3.5; and

(2) other items, if any, that the RBC instructions may provide.

[P.L.186-1996, § 1.]

27-1-36-25. Report of RBC levels — Filing. — (a) A domestic insurer shall prepare a report of the RBC levels of the insurer as of the last day of the calendar year most recently ended. The report must:

(1) be in the form; and

(2) contain the information;

required by the RBC instructions.

(b) On or before March 1 of each year, a domestic insurer shall file the RBC report described in subsection (a) with:

(1) the commissioner;

(2) the NAIC, in accordance with the RBC instructions; and

(3) the insurance commissioner in any state other than Indiana in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer in writing of the commissioner's request for the insurer's RBC report.

An insurer is not required to pay a fee when filing an RBC report under this subsection.

(c) If an insurer is required under subsection (b)(3) to file its RBC report with the insurance commissioner of a state other than Indiana, the insurer shall file the RBC report with the insurance commissioner of that state not later than:

(1) fifteen (15) days after the insurer receives the notice; or

(2) March 1 of the calendar year in which the insurer receives the notice;

whichever occurs later. [P.L.186-1996, § 1.]

27-1-36-26. Determination of health insurer's RBC. — A life and health insurer's RBC must be determined in accordance with the formula set forth in the RBC instructions. The formula must take into account (and may adjust for the covariance between):

(1) the risk with respect to the insurer's assets;

(2) the risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) the interest rate risk with respect to the insurer's business; and

(4) all other business risks and such other relevant risks as are set forth in the RBC instructions;

determined by applying the factors in the manner set forth in the RBC instructions. [P.L.186-1996, § 1.]

27-1-36-27. Determination of property and casualty insurer's RBC. — A property and casualty insurer's RBC must be determined in

accordance with the formula set forth in the RBC instructions. The formula must take into account (and may adjust for the covariance between):

- (1) asset risk;
- (2) credit risk;
- (3) underwriting risk; and
- (4) all other business risks and such other relevant risks as are set forth in the RBC instructions;

determined by applying the factors in the manner set forth in the RBC instructions. [P.L.186-1996, § 1.]

27-1-36-28. Inaccurate report — Adjustment. — (a) If the commissioner determines an RBC report filed by a domestic insurer is inaccurate, the commissioner shall:

- (1) adjust the RBC report to correct the inaccuracy; and
- (2) notify the insurer of the adjustment.

(b) A notice provided by the commissioner under subsection (a) must contain a statement of the reason for the adjustment. [P.L.186-1996, § 1.]

27-1-36-29. Company action level event. — As used in this chapter, “company action level event” means any of the following events:

- (1) The filing of an RBC report by an insurer that indicates that:

(A) the insurer’s total adjusted capital is:

- (i) greater than or equal to its regulatory action level RBC; but
- (ii) less than its company action level RBC; or

(B) if a life and health insurer, the insurer:

- (i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of two and five-tenths (2.5) multiplied by its authorized control level RBC; and
- (ii) has a negative trend.

- (2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates that:

(A) the insurer’s total adjusted capital is:

- (i) greater than or equal to its regulatory action level RBC; but
- (ii) less than its company action level RBC; or

(B) if a life and health insurer, the insurer:

- (i) has total adjusted capital that is greater than or equal to its company action level RBC but less than the product of two and five-tenths (2.5) multiplied by its authorized control level RBC; and
- (ii) has a negative trend;

unless the insurer challenges the adjusted RBC report under section 44 [IC 27-1-36-44] of this chapter.

- (3) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer’s challenge to an adjusted RBC report described in subdivision (2). [P.L.186-1996, § 1.]

27-1-36-30. Plan following company action level event. — If a company action level event occurs, the insurer shall prepare and submit to the commissioner an RBC plan that does all the following:

(1) Addresses the following:

- (A) The conditions that contribute to the insurer's RBC level.
- (B) The key assumptions affecting the insurer's projections and the sensitivity of the projections to the assumptions.
- (C) The quality of, and problems associated with, the insurer's business, including the following:
 - (i) Assets.
 - (ii) Anticipated business growth and associated surplus strain.
 - (iii) Extraordinary exposure to risk.
 - (iv) Mix of business and use of reinsurance, if any, in each case.

(2) Contains proposals for corrective actions that the insurer intends to take and that would be expected to result in the elimination of the RBC level.

(3) Provides projections of the insurer's financial results in the current year and at least the four (4) consecutive succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of the following:

- (A) Statutory operating income.
- (B) Net income.
- (C) Capital.
- (D) Surplus. (The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense, and benefit component.) [P.L.186-1996, § 1.]

27-1-36-31. Time for submission of plan under IC 27-1-36-30. — An insurer must submit to the commissioner an RBC plan required under section 30 [IC 27-1-36-30] of this chapter:

- (1) not more than forty-five (45) days after the company action level event; or
- (2) not more than forty-five (45) days after notification to the insurer that the commissioner has, after a hearing under section 44 [IC 27-1-36-44] of this chapter, rejected the insurer's challenge. [P.L.186-1996, § 1.]

27-1-36-32. Determination as to plan — Revision. — (a) Not more than sixty (60) days after an insurer submits an RBC plan under section 31 [IC 27-1-36-31] of this chapter, the commissioner shall notify the insurer of whether the RBC plan:

- (1) must be implemented; or
- (2) is unsatisfactory.

(b) If the commissioner determines that an RBC plan is unsatisfactory, the notification to the insurer:

- (1) must state the reasons for the determination; and
- (2) may include revisions proposed by the commissioner that will render the RBC plan satisfactory.

(c) Upon receiving a notification from the commissioner under subsection (b), the insurer shall prepare a revised RBC plan. The revised RBC plan may

incorporate by reference any revisions proposed by the commissioner. The insurer shall submit the revised RBC plan to the commissioner:

- (1) not more than forty-five (45) days after the insurer receives the notification under subsection (a)(2); or
- (2) not more than forty-five (45) days after the insurer receives the notification from the commissioner that the commissioner has, after a hearing under section 44 [IC IC 27-1-36-44] of this chapter, rejected the insurer's challenge. [P.L.186-1996, § 1.]

27-1-36-33. Unsatisfactory plan. — If the commissioner notifies an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the commissioner may, subject to the insurer's right to a hearing under section 44 [IC IC 27-1-36-44] of this chapter, specify in the notification that the notification constitutes a regulatory action level event. [P.L.186-1996, § 1.]

27-1-36-34. Filing of plan in other states. — (a) A domestic insurer that files an RBC plan or a revised RBC plan with the commissioner shall file a copy of the RBC plan or revised RBC plan with the insurance commissioner in each state other than Indiana in which the insurer is authorized to do business, if:

- (1) the state has an RBC provision substantially similar to section 45 [IC 27-1-36-45] of this chapter; and
- (2) the insurance commissioner of that state has notified the insurer in writing of its request for the filing.

(b) If an insurer is required under subsection (a) to file its RBC plan or revised RBC plan with the insurance commissioner of a state other than Indiana, the insurer shall file the RBC plan or revised RBC plan not later than:

- (1) fifteen (15) days after the insurer receives notice under subsection (a)(2); or
- (2) the date on which the RBC plan or revised RBC plan is filed under sections 31 and 32 [IC 27-1-36-31 and IC 27-1-36-32] of this chapter; whichever occurs later. [P.L.186-1996, § 1.]

27-1-36-35. Regulatory action level event. — As used in this chapter, "regulatory action level event" means any of the following events:

- (1) The filing of an RBC report by the insurer that indicates that the insurer's total adjusted capital is:
 - (A) greater than or equal to its authorized control level RBC; but
 - (B) less than its regulatory action level RBC.
- (2) The notification by the commissioner to an insurer of an adjusted RBC report that indicates that the insurer's total adjusted capital is:
 - (A) greater than or equal to its authorized control level RBC; but
 - (B) less than its regulatory action level RBC;

unless the insurer challenges the adjusted RBC report under section 44 [IC 27-1-36-44] of this chapter.

(3) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC report.

(4) The failure of the insurer to file an RBC report by the filing date, unless the insurer:

(A) has provided an explanation for the failure that is satisfactory to the commissioner; and

(B) has cured the failure not more than ten (10) days after the March 1 filing date.

(5) The failure of the insurer to submit an RBC plan to the commissioner within the period prescribed in section 31 [IC 27-1-36-31] of this chapter.

(6) Notification by the commissioner to the insurer under section 33 [IC 27-1-36-33] of this chapter, unless the insurer challenges the notification under section 44 of this chapter.

(7) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the challenge to a determination by the commissioner under section 33 of this chapter.

(8) Notification by the commissioner to the insurer that the insurer has failed to adhere to its RBC plan or revised RBC plan, but only if:

(A) the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event in accordance with its RBC plan or revised RBC plan; and

(B) the commissioner has so stated in the notification;

unless the insurer challenges the determination under section 44 of this chapter.

(9) The notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to the determination made under subdivision (8). [P.L.186-1996, § 1.]

27-1-36-36. Plan after regulatory action level event. — If a regulatory action level event occurs, the commissioner shall:

(1) require the insurer to prepare an RBC plan or, if applicable, a revised RBC plan;

(2) perform such examination or analysis as the commissioner considers necessary of the assets, liabilities, and operations of the insurer, including a review of the insurer's RBC plan or revised RBC plan; and

(3) after the examination or analysis, issue a corrective order specifying the corrective actions that the commissioner determines are required, taking into account relevant factors with respect to the insurer, based upon the commissioner's examination or analysis of the assets, liabilities, and operations of the insurer, including the results of any sensitivity tests undertaken under the RBC instructions. [P.L.186-1996, § 1.]

27-1-36-37. Submission of revised plan. — The RBC plan or revised RBC plan must be submitted:

- (1) not more than forty-five (45) days after the regulatory action level event;
- (2) not later than forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing under section 44 [IC 27-1-36-44] of this chapter, rejected the insurer's challenge to an adjusted RBC report; or
- (3) not more than forty-five (45) days after the notification to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC plan. [P.L.186-1996, § 1.]

27-1-36-38. Retention of experts and consultants. — (a) The commissioner may retain actuaries, investment experts, and other consultants that the commissioner determines to be necessary to:

- (1) review the insurer's RBC plan or revised RBC plan;
- (2) examine or analyze the assets, liabilities, and operations of the insurer; and
- (3) formulate the corrective order with respect to the insurer.

(b) The reasonable costs and expenses relating to consultants shall be paid by the affected insurer or another party, as directed by the commissioner. [P.L.186-1996, § 1.]

27-1-36-39. Authorized control level event. — As used in this chapter, "authorized control level event" means any of the following events:

- (1) The filing of an RBC report by an insurer that indicates that the insurer's total adjusted capital is:

- (A) greater than or equal to its mandatory control level RBC; but
- (B) less than its authorized control level RBC.

- (2) The notification by the commissioner to the insurer of an adjusted RBC report that indicates that the insurer's total adjusted capital is:

- (A) greater than or equal to its mandatory control level RBC; but
- (B) less than its authorized control level RBC;

unless the insurer challenges the adjusted RBC report under section 44 [IC 27-1-36-44] of this chapter.

- (3) Notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer's challenge to an adjusted RBC report.

- (4) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order, unless the insurer has challenged the corrective order under section 44 of this chapter.

- (5) The failure of the insurer to respond, in a manner satisfactory to the commissioner, to a corrective order if, after a challenge and a hearing under section 44 of this chapter, the commissioner has:

- (A) rejected the challenge; or
- (B) modified the corrective order.

[P.L.186-1996, § 1.]

27-1-36-40. Actions following authorized control level event. —

(a) If an authorized control level event occurs with respect to an insurer, the commissioner shall:

(1) take the actions required under section 36 [IC 27-1-36-36] of this chapter regarding an insurer; or

(2) if the commissioner considers it to be in the best interests of:

(A) the policyholders and creditors of the insurer; and

(B) the public;

take any action necessary to cause the insurer to be placed under regulatory control under IC 27-9.

(b) An authorized control level event is sufficient grounds for the commissioner to:

(1) determine, under IC 27-9-2-1, that an insurer has committed or engaged in, or is about to commit or engage in, an act, a practice, or a transaction that would subject the insurer to a delinquency proceeding under IC 27-9-3-1 or IC 27-9-3-6; and

(2) serve upon the insurer, under IC 27-9-2-1, orders reasonably necessary to correct, eliminate, or remedy the conduct, condition, or ground.

The commissioner has the rights, powers, and duties with respect to the insurer that are set forth in IC 27-9.

(c) If the commissioner takes action under subsection (a)(2), the insurer is entitled to the protections of IC 27-9-2 pertaining to summary proceedings. [P.L.186-1996, § 1.]

27-1-36-41. Mandatory control level event. — As used in this chapter, “mandatory control level event” means any of the following events:

(1) The filing of an RBC report that indicates that the insurer’s total adjusted capital is less than its mandatory control level RBC.

(2) Notification by the commissioner to the insurer of an adjusted RBC report that indicates that the insurer’s total adjusted capital is less than its mandatory control level RBC unless the insurer challenges the adjusted RBC report under section 44 [IC 27-1-36-44] of this chapter.

(3) Notification by the commissioner to the insurer that the commissioner has, after a hearing under section 44 of this chapter, rejected the insurer’s challenge to an adjusted RBC report. [P.L.186-1996, § 1.]

27-1-36-42. Actions following mandatory control level event. —

(a) If a mandatory control level event occurs with respect to a life and health insurer, the commissioner shall take the actions necessary to place the insurer under regulatory control under IC 27-9.

(b) A mandatory control level event is sufficient grounds for the commissioner to take action against a life and health insurer under IC 27-9, and the commissioner has the rights, powers, and duties with respect to the insurer that are set forth in IC 27-9.

(c) If the commissioner takes action against a life and health insurer under an adjusted RBC report, the insurer is entitled to the protections of IC 27-9-2 pertaining to summary proceedings.

(d) The commissioner may forego action under subsections (a) through (c) for not more than ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period. [P.L.186-1996, § 1.]

27-1-36-43. Mandatory control level event — Property and casualty insurer. — (a) If a mandatory control level event occurs with respect to a property and casualty insurer, the commissioner:

(1) shall take the actions necessary to place the insurer under regulatory control under IC 27-9; or

(2) in the case of an insurer that is not writing business and that is running off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner.

(b) A mandatory control level event is sufficient grounds for the commissioner to take action against a property and casualty insurer under IC 27-9, and the commissioner has the rights, powers, and duties with respect to the insurer that are set forth in IC 27-9.

(c) If the commissioner takes action against a property and casualty insurer under an adjusted RBC report, the insurer is entitled to the protections of IC 27-9-2 pertaining to summary proceedings.

(d) The commissioner may forego action for not more than ninety (90) days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety (90) day period. [P.L.186-1996, § 1.]

27-1-36-44. Confidential departmental hearing — Request. —

(a) The insurer has the right to a confidential departmental hearing, on the record, upon the occurrence of any of the following:

(1) Notification to an insurer by the commissioner of an adjusted RBC report.

(2) Notification to an insurer by the commissioner under section 32(b) [IC 27-1-36-32(b)] of this chapter.

(3) Notification to an insurer by the commissioner that:

(A) the insurer has failed to adhere to its RBC plan or revised RBC plan; and

(B) the insurer's failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan.

(4) Notification to an insurer by the commissioner of a corrective order with respect to the insurer.

(b) At a confidential hearing under this section, the insurer may challenge any determination or action by the commissioner.

(c) An insurer must notify the commissioner of the insurer's request for a hearing under this section not more than five (5) days after the notification by the commissioner under subsection (a). Upon receiving the insurer's

request for a hearing, the commissioner shall set a date for the hearing. The date set by the commissioner must be:

- (1) at least ten (10); and
- (2) not more than thirty (30);

days after the date of the insurer's request. [P.L.186-1996, § 1.]

27-1-36-45. Confidential information. — (a) Because they contain information that might be damaging to an insurer if made available to the insurer's competitors, the following are declared confidential for purposes of IC 5-14-3-4 and are not subject to inspection and copying by the public under IC 5-14-3-3:

(1) An RBC report filed with the commissioner under this chapter, to the extent that the information in the report is not required to be provided in a publicly available annual statement schedule.

(2) An RBC plan filed with the commissioner under this chapter, including:

(A) the results or report of any examination or analysis of an insurer performed under the plan; and

(B) any corrective order issued by the commissioner under the examination or analysis.

(b) The information described in subsection (a):

(1) must be kept confidential by the commissioner;

(2) shall not be made public; and

(3) is not subject to subpoena, other than by the commissioner and then only for the purpose of enforcement actions taken by the commissioner under this chapter or another provision of this title. [P.L.186-1996, § 1.]

27-1-36-46. Prohibition of publication or dissemination of RBC level or components — Materially false statements. — (a) The comparison of an insurer's total adjusted capital to any of its RBC levels is a regulatory tool that may indicate the need for possible corrective action with respect to the insurer and it is not intended as a means to rank insurers generally. Except as provided in subsection (b), the action of an insurer, an agent, a broker, or other person engaged in any manner in the insurance business, in:

(1) making, publishing, disseminating, circulating, or placing before the public; or

(2) causing, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way;

an advertisement, an announcement, or a statement containing an assertion, a representation, or a statement regarding the RBC level of an insurer or any component derived in the calculation of the RBC level of an insurer is misleading and is prohibited.

(b) If:

(1) a materially false statement with respect to the comparison regarding an insurer's total adjusted capital to an RBC level of the insurer or

an inappropriate comparison of any other amount to the insurer's RBC levels is published in any written publication; and

(2) the insurer is able to demonstrate to the commissioner with substantial proof the:

(A) falsity; or

(B) inappropriateness;

of the statement;

the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement. [P.L.186-1996, § 1.]

27-1-36-47. Use of instructions, reports, and plans. — (a) The:

(1) RBC instructions;

(2) RBC reports;

(3) adjusted RBC reports;

(4) RBC plans; and

(5) revised RBC plans;

referred to in this chapter are intended solely for use by the commissioner in monitoring the solvency of insurers and the need for possible corrective action with respect to insurers.

(b) The instructions, reports, and plans referred to in subsection (a) shall not be:

(1) used by the commissioner for ratemaking;

(2) considered or introduced as evidence in a rate proceeding; or

(3) used by the commissioner to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance that an insurer or an affiliate is authorized to write. [P.L.186-1996, § 1.]

27-1-36-48. Applicability of other laws. — This chapter is supplemental to other provisions of Indiana law and does not preclude or limit any other powers or duties of the commissioner under other provisions of Indiana law, including IC 27-9. [P.L.186-1996, § 1.]

27-1-36-49. RBC report by foreign insurer. — (a) Upon the written request of the commissioner, a foreign insurer shall submit to the commissioner an RBC report as of the last day of the calendar year most recently ended. The foreign insurer shall submit the report on or before:

(1) the date on which a domestic insurer would be required to file an RBC report under this chapter; or

(2) fifteen (15) days after the foreign insurer receives the request;

whichever occurs later.

(b) Upon the written request of the commissioner, a foreign insurer shall promptly submit to the commissioner a copy of any RBC plan that the foreign insurer has filed with the insurance commissioner of any other state. [P.L.186-1996, § 1.]

27-1-36-50. Events occurring with foreign insurers — Failure to file plan. — (a) If:

(1) an event that is:

(A) a company action level event;

(B) a regulatory action level event; or

(C) an authorized control level event;

occurs with respect to a foreign insurer as determined under the RBC statute applicable in the state of domicile of the insurer (or, if no RBC statute is in force in that state, under this chapter); and

(2) the insurance commissioner of the state of domicile of the foreign insurer fails to require the foreign insurer to file an RBC plan in the manner specified under that state's RBC statute (or, if no RBC statute is in force in that state, under sections 31 through 35 [IC 27-1-36-31 through IC 27-1-36-35] of this chapter);

the commissioner may require the foreign insurer to file an RBC plan with the commissioner.

(b) In a situation described in subsection (a), the failure of the foreign insurer to file an RBC plan with the commissioner is grounds for the commissioner to order the insurer to cease and desist from writing new insurance business in Indiana. [P.L.186-1996, § 1.]

27-1-36-51. Mandatory control level event occurring with foreign insurer — Liquidation of property in Indiana. — If:

(1) a mandatory control level event occurs with respect to a foreign insurer; and

(2) no domiciliary receiver has been appointed with respect to the foreign insurer under the rehabilitation and liquidation statute applicable in the state of domicile of the foreign insurer;

the commissioner may apply to the Marion County circuit court with respect to the liquidation of property of the foreign insurer that is found in Indiana. The occurrence of the mandatory control level event is adequate grounds for the application. [P.L.186-1996, § 1.]

27-1-36-52. Notice — Time of effect. — (a) A notice by the commissioner to an insurer that may result in regulatory action under this chapter, if transmitted by registered or certified mail, is effective when the notice is put in the mail.

(b) A transmission by the commissioner to an insurer under this chapter other than a notice described in subsection (a) is effective upon the insurer's receipt of the transmission. [P.L.186-1996, § 1.]

27-1-36-53. Immunity. — There is no liability on the part of, and no cause of action shall arise against:

(1) the commissioner;

(2) the department; or

(3) any employee or agent of the department;

for any action taken in the exercise of their powers and the performance of duties under this chapter. [P.L.186-1996, § 1.]

27-1-36-54. Severability. — The provisions of this chapter are severable in the manner provided in IC 1-1-1-8. If:

(1) any provision of this chapter; or

(2) the application of this chapter to any person or circumstance; is held invalid, that determination shall not affect the provisions or applications of this chapter that can be given effect without the invalid provision or application. [P.L.186-1996, § 1.]

27-1-36-55. Adoption of rules. — The commissioner, under IC 4-22-2, may adopt reasonable rules necessary for the implementation of this chapter. [P.L.186-1996, § 1.]

27-1-36-56. Excess capital. — (a) An excess of capital over the amount produced by the:

(1) risk based capital requirements contained in this chapter; and

(2) formulas, schedules, and instructions referred to in this chapter; is desirable in the business of insurance. Therefore, insurers should seek to maintain capital above the RBC levels required by this chapter.

(b) Additional capital is used and useful in the insurance business and helps to secure an insurer against various risks that are:

(1) inherent in or affecting the business of insurance; and

(2) not accounted for or only partially measured by the risk based capital requirements contained in this chapter. [P.L.186-1996, § 1.]

ARTICLE 2

POWERS AND DUTIES OF INSURERS

CHAPTER.

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CHAPTER 1

ACTUARIES' AUTHORITY TO ADMINISTER OATHS

SECTION.

27-2-1-1. Actuaries may administer oaths.

27-2-1-1. Actuaries may administer oaths. — Actuaries of mutual fire insurance companies or associations organized by virtue of the laws of this state for the purpose of mutual insurance of the property of its members against loss by fire or damage by lightning, which property to be insured

shall embrace dwelling-houses, barns, accompanying outbuildings and their contents, farm implements, hay, grain, wool and other farm products, live stock, wagons, carriages, harness, household goods, wearing apparel, provisions, musical instruments and libraries, such property being upon farms as farm property, shall have the authority to administer oaths to the insured and all persons necessary to be examined as witnesses in the adjustment of losses to the property of persons insured in said companies or associations where such loss was caused by fire or lightning. [Acts 1891, ch. 158, § 1, p. 375.]

Cross References. General powers of insurance companies, IC 27-1-7-2.

CHAPTER 2

ANNUAL STATEMENT BY SPECIAL CHARTER COMPANIES

SECTION.

27-2-2-1. Annual statements — Contents.

27-2-2-2. Fees for examination.

27-2-2-1. Annual statements — Contents. — (a) Every company created by special act of the general assembly of the state of Indiana for the purpose of transacting the business of insurance shall, on or before the third Monday of January of each year, furnish the insurance commissioner with a statement, verified by the oaths of the president and secretary of said company and signed by a majority of the directors of such company, which statement shall show the following:

- (1) First, the name and locality of the company.
- (2) Second, the amount of its capital stock.
- (3) Third, the amount of its capital stock paid-in.
- (4) Fourth, the assets of the company, including the following:
 - (A) The amount of cash on hand and in the hands of agents or other persons.
 - (B) The value of its real estate.
 - (C) The bonds owned by the company and how they are secured, with the rate of interest.
 - (D) Debts to the company secured by mortgage.
 - (E) Debts otherwise secured.
 - (F) Debts for premiums.
 - (G) All other securities.
- (5) Fifth, the amount of liabilities due or not due to banks or other creditors of the company.
- (6) Sixth, losses adjusted and due.
- (7) Seventh, losses adjusted and not due.
- (8) Eighth, losses unadjusted.
- (9) Ninth, losses in suspense waiting for further proof.
- (10) Tenth, all other claims against the company.
- (11) Eleventh, the greatest amount insured in any one (1) risk.
- (12) Twelfth, the greatest amount allowed by the rules of the company to be insured in any one (1) city or town.

(13) Thirteenth, the greatest amount allowed to be insured in any one (1) block.

(b) The insurance commissioner shall cause a copy of such annual statement to be published in the two (2) leading daily newspapers of the state having the largest general circulation and also in some newspaper of general circulation, printed and published in the city or town in which the principal office of such company is located, Provided That not more than one dollar (\$1) per square shall be paid for each one (1) of such publications, the expense to be paid by the company; and Provided further, That it shall be the duty of the commissioner to furnish such company with a certified copy of such statement or report whenever so requested to do by any officer of such company. [Acts 1899, ch. 134, § 1, p. 220; P.L.252-1985, § 125; P.L.11-1987, § 29.]

Opinions of Attorney General. Although it appears from the language of IC 27-2-8-1 that all insurance companies, including special charter companies, were meant to be included, since special charter companies were created prior to the adoption of the 1851 Constitution, general acts pertaining to insur-

ance companies are not wholly applicable to those charters, and IC 27-2-8-1 does not take away any of the special privileges of special charter companies and is not effective as against such companies. This section is still in force and effect as to such companies. 1952, No. 78, p. 301.

27-2-2-2. Fees for examination. — The insurance commissioner shall charge and collect for the state of Indiana the sum of five dollars (\$5) in each and every case for the examination of the charter and five dollars (\$5) in each and every case for the examination of the statement and investigation of evidence of the investment of the assets of such company in accordance with the provisions of their respective charters, and two dollars (\$2) for each certified copy of such statement, and shall pay the same over to the treasurer of state to go into the general fund of the state; Provided, however, the provisions of this chapter shall not apply to farmers' mutual fire insurance associations organized under special act since the year 1852, and doing business strictly under the assessment plan. [Acts 1899, ch. 134, § 2, p. 220; P.L.252-1985, § 126.]

CHAPTER 3

DISBURSEMENTS BY VOUCHERS

SECTION.

27-2-3-1. Disbursements — Vouchers.

27-2-3-1. Disbursements — Vouchers. — No domestic life insurance corporation shall make any disbursements unless the same be evidenced by a voucher signed by or on behalf of the person, firm, limited liability company, or corporation receiving the money and correctly describing the consideration for the payment, and, if the same be for services and disbursements, setting forth the services rendered and an itemized statement of the disbursements made, and if it be in connection with any matter pending before any legislative or public body or before any department or officer of any government, correctly describing, in addition, the nature of the

matter and of the interest of such corporation therein, or, if such a voucher cannot be obtained, by an affidavit stating the reasons therefor and setting forth the particulars above mentioned. [Acts 1907, ch. 168, § 1, p. 266; P.L.1-1994, § 133.]

CHAPTER 4

RECEIVERS

SECTION.

27-2-4-1. Receivership — Applications for appointment of receiver limited to attorney general.

27-2-4-1. Receivership — Applications for appointment of receiver limited to attorney general. — No suit or action seeking the appointment of a receiver for any domestic insurance company, whether stock or mutual, organized and doing business under the laws of Indiana and subject to supervision and examination of the insurance commissioner or other department of state, shall be instituted or maintained, or a receiver appointed by any court, except and only in an action instituted by the attorney general, on the request of the insurance commissioner or other department of state having supervision of such corporation; Provided, nothing in this section shall affect any litigation pending on May 15, 1919, in any court of record. [Acts 1919, ch. 101, § 1, p. 502; P.L.252-1985, § 127.]

CHAPTER 5

ALIENATION OF BENEFITS

SECTION.

27-2-5-1. Alienation by beneficiary prohibited — Exemption from levy —

Premiums not exempt — Insurer discharge from liability.

27-2-5-1. Alienation by beneficiary prohibited — Exemption from levy — Premiums not exempt — Insurer discharge from liability. —

(a) As used in this section, “premium” includes any deposit or contribution.

(b) No person entitled to receive benefits under a life insurance or life annuity contract, or under a written agreement supplemental thereto, issued by domestic life insurance company, shall be permitted to commute, anticipate, encumber, alienate, or assign such benefits, if the right to do so is expressly prohibited or withheld by a provision contained in such contract or supplemental agreement. And if such contract, policy, or supplemental agreement so provides, such benefits, except when payable to the person who provided the consideration for such contract, shall not be subject to such persons’ debts, contracts, or engagements, nor to any judicial process to levy upon or attach the same for payment thereof.

(c) A premium paid for an individual life insurance policy that names as a beneficiary, or is legally assigned to, a spouse, child, or relative who is

dependent upon the policy owner is not exempt from the claims of the creditors of the policy owner if the premium is paid:

- (1) Not more than one (1) year before the date of the filing of a voluntary or involuntary bankruptcy petition by; or
- (2) To defraud the creditors of;

the policy owner.

(d) The insurer issuing the policy is discharged from all liability by payment of the proceeds and avails of the policy (as defined in IC 27-1-12-14(b)) in accordance with the terms of the policy unless, before payment, the insurer has received at the insurer's home office, written notice by or on behalf of a creditor of the policy owner that specifies the amount claimed against the policy owner. [Acts 1931, ch. 20, § 1, p. 47; P.L.253-1995, § 3.]

Cross References. Exemption of benefits from liability of insured person, IC 27-1-12-14.

Provisions concerning exemption from claims of creditors, IC 27-1-12-21, IC 27-8-3-23.

Res Gestae. Status of exemptions in Indiana, 38 (No. 4) Res Gestae 14 (1994).

Cited: Walro v. Striegel, 131 Bankr. 697 (S.D. Ind. 1991).

NOTES TO DECISIONS

ANALYSIS

In general.
Lottery proceeds.

In General.

An annuity contract purchased and paid for in full by a bankrupt is excepted by Indiana statute from the class of insurance and annuity contracts which are not subject to process against a beneficiary for the payment of his

debts. Pueblo Sav. & Trust Co. v. Power, 115 F.2d 69 (7th Cir. 1940).

Lottery Proceeds.

An annuity contract between an Indiana resident and the Arizona lottery commission, specifying a method of payment for Arizona lottery winnings, was not excludable, by way of this section, from a bankrupt's estate. Brown v. Boyn, 86 Bankr. 944 (N.D. Ind. 1988).

Collateral References. Respective rights of insured and beneficiary in endowment, accumulation and tontine policies. 72 A.L.R.2d 1311.

Right of beneficiary as against estate of insured who borrowed on the policy. 31 A.L.R.2d 979.

CHAPTER 6

INVESTMENT IN CERTAIN BONDS

SECTION.

27-2-6-1. Insurance, surety and trust companies and savings banks autho-

rized to invest in bonds issued under Federal Credit Act.

27-2-6-1. Insurance, surety and trust companies and savings banks authorized to invest in bonds issued under Federal Credit Act. — Any life insurance, fire insurance, livestock insurance, casualty or accident insurance, or bonding or surety company, or trust company or savings bank now or hereafter organized under the laws of the state of Indiana, in addition to the investments now authorized by law, be and it

hereby is authorized and empowered to invest its funds in obligations issued by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) as amended and such obligations are hereby declared eligible for any deposit required of any such company under the laws of this state. [Acts 1931, ch. 55, § 1, p. 136; 1975, P.L. 44, § 3.]

Cross References. Casualty insurance company investments, IC 27-1-13-3.

Life insurance company investments, IC 27-1-12-2.

CHAPTER 7

COMPLIANCE WITH OTHER STATES' REGULATIONS

SECTION.

27-2-7-1. Domestic insurance companies — Power to comply with regulations of other states.

27-2-7-2. Nonliability for payment of taxes or fees levied by another state.

SECTION.

27-2-7-3. Chapter to apply to acts done after March 3, 1945.

27-2-7-1. Domestic insurance companies — Power to comply with regulations of other states. — Every domestic insurer shall have power to comply with any statute, ordinance or other law of any state, territory or political subdivision thereof (including the District of Columbia) imposing any license, excise, privilege, premium, occupation or other fee or tax and to pay such fee or tax unless prior to such payment such statute, ordinance or other law shall have been expressly held invalid by the state court having final appellate jurisdiction in the premises, or by the Supreme Court of the United States. [Acts 1945, ch. 123, § 1, p. 264.]

27-2-7-2. Nonliability for payment of taxes or fees levied by another state. — No officer, director or trustee of any insurer shall be subject to any personal liability by reason of any payment, or determination not to contest payment, deemed by the board of directors or trustees to be in the corporate interests of such insurer, of any license, excise, privilege, premium, occupation or other fee or tax to any state, territory or political subdivision thereof (including the District of Columbia), unless prior to such payment the statute, ordinance or other law imposing such fee or tax shall have been expressly held invalid by the state court having final appellate jurisdiction in the premises, or by the Supreme Court of the United States. [Acts 1945, ch. 123, § 2, p. 264.]

27-2-7-3. Chapter to apply to acts done after March 3, 1945. — This chapter shall be applicable to acts done and payments made on and after March 3, 1945; Provided, however, That nothing contained in this chapter shall be construed as directly or indirectly limiting, minimizing, or interpreting the rights and powers and duties of insurers and their officers, directors, and trustees, existing before March 3, 1945, except as specifically exempted by this chapter. [Acts 1945, ch. 123, § 3, p. 264; P.L.252-1985, § 128.]

CHAPTER 8

COMMISSIONER'S LIST — MOTOR VEHICLE INSURERS

SECTION.

27-2-8-1. Motor vehicle insurers — Examination — Reserves — Report of financial condition.

27-2-8-1. Motor vehicle insurers — Examination — Reserves — Report of financial condition. — The insurance commissioner shall annually forward to all departments and divisions of the state requiring the posting of security because of motor vehicle accidents and resultant damage and loss a list of those insurers which are, or which are agreeable to be, examined by the insurance department in the same manner as set out in IC 27-1-3-7 and IC 27-1-3.1, and set up and maintain liabilities and reserves in the same manner as set out in IC 27-1-13-8, and submit a written statement of their financial condition and their operations on the forms as prescribed by the National Association of Insurance Commissioners, and in the same manner as set out in IC 27-1-3-7 and IC 27-1-20-21. No certificates or policies shall be accepted by such departments or divisions as such security unless the insurer so filing the certificate or policy shall have met or is agreeable to meeting the requirements as set out above. [Acts 1949, ch. 240, § 1; P.L.252-1985, § 129; P.L.26-1991, § 24.]

Cross References. Financial responsibility of owners and operators, IC 9-25-4.

Opinions of Attorney General. Although it appears from the language of this section that all insurance companies, including special charter companies, were meant to be included, since special charter companies were created prior to the adoption of the 1851

Constitution, general acts pertaining to insurance companies are not wholly applicable to those charters, and this section does not take away any of the special privileges of special charter companies and is not effective as against such companies. IC 27-2-2-1 is still in force and effect as to such companies. 1952, No. 78, p. 301.

CHAPTER 9

SUBSIDIARY COMPANIES

SECTION.

27-2-9-1. Subsidiary companies — Chapter supplemental.
 27-2-9-2. Definitions.
 27-2-9-3. Establishment of subsidiary company by domestic insurance company — Requirements — Examination by commissioner [as amended by P.L.185-1997].
 27-2-9-3. Establishment of subsidiary company by domestic insurance company — Requirements — Examination by commissioner [as amended by P.L.186-1997].

SECTION.

27-2-9-4. Primary and subsidiary companies separate and distinct entities.
 27-2-9-5. Directors and officials of primary and subsidiary companies may be identical.
 27-2-9-6. Acquiring voting stock of another company — Law governing.
 27-2-9-7. Establishment of more than one subsidiary company.
 27-2-9-8. Same treatment of foreign, alien and subsidiary companies.
 27-2-9-9. Registry of stock of subsidiary company.

27-2-9-1. Subsidiary companies — Chapter supplemental. — (a) This chapter, shall be supplemental to IC 27-1. However, the provisions of this chapter shall be controlling in the event there exists any conflict between the provisions of this chapter and the general provisions of IC 27-1.

(b) Subsidiaries established by organization or acquisition prior to September 1, 1981, and otherwise permitted by law at the time of their organization or acquisition shall not be required to meet the filing requirements of IC 27-2-9-3(c) so long as all legal requirements were met at the time of organization or acquisition. [Acts 1957, ch. 55, § 1; 1969, ch. 186, § 5; 1981, P.L. 241, § 3.]

Cross References. Acquisition of certain minority interests in subsidiary domestic stock companies, IC 27-3-3.

Exchange of securities, IC 27-3-1.
Insurance holding company system regulation, IC 27-1-23.

27-2-9-2. Definitions. — As used in this chapter:

(a) The term “subsidiary company” means a corporation, domestic, foreign, or alien, more than fifty percent (50%) of the voting stock of which is owned by an insurance company (referred to in this chapter as “primary company”).

(b) The term “primary company” means an insurance company of any class or kind which owns more than fifty percent (50%) of the voting capital stock of another corporation. [Acts 1957, ch. 55, § 2; 1969, ch. 186, § 1; P.L.252-1985, § 130.]

27-2-9-3. Establishment of subsidiary company by domestic insurance company — Requirements — Examination by commissioner [as amended by P.L.185-1997]. — (a) A domestic insurance company may establish by organization or acquisition of voting stock, a domestic, foreign, or alien subsidiary company to conduct any lawful kind of business permitted by the law under which the subsidiary company is created, if the establishment meets the limitations of this section. Ownership of a subsidiary company permitted by this section constitutes a permitted power of a primary company under IC 27-1-7-2 or any other statute under which the primary company is organized, unless its articles of incorporation prohibit its establishment of subsidiary companies.

(b) The primary company, at the time of establishing a subsidiary company, shall possess assets of not less than twenty-five million dollars (\$25,000,000); or combined capital and surplus in the case of a stock company, or surplus in the case of a mutual company, of not less than three million five hundred thousand dollars (\$3,500,000). However, where the primary company is establishing a subsidiary company qualifying under subsection (e)(1), these minimum amounts shall be increased by the aggregate amount of the primary company’s investment in all its subsidiary companies qualified under subsection (e)(1), including the one being established.

(c) The primary company shall file with the commissioner a certified copy of the resolution of its board of directors approving the establishment of the subsidiary company. If the subsidiary company is authorized to conduct a business, other than the business of making insurance or reinsurance pursuant to a certificate issued by the Indiana insurance commissioner or to a comparable grant of authority by an insurance official or officials in the jurisdiction of the subsidiary company’s incorporation, the primary company

shall also file with the commissioner a summary description of the business to be carried on by the subsidiary company. The commissioner shall grant approval for such establishment in writing if the commissioner determines that there has been compliance with the conditions and requirements of this section.

(d) The department shall have the power to conduct periodic examinations and require reports reflecting the effect of the condition and operation of subsidiary companies on the financial condition of the primary company. A noninsurance subsidiary company is required to annually furnish the department financial statements prepared under generally accepted accounting principles and certified by an independent certified public accountant, and the department is authorized to rely upon such statements. The department may also make any additional examination or require any other reports with respect to any subsidiary company necessary to carry out the department's administration of this section. If any subsidiary company is conducting its business in a manner that would clearly tend to impair the capital or surplus fund of the primary company or otherwise make the operation of the primary company financially unsafe, the department shall have the same powers to act with respect to the primary company as it would have with respect to any comparable improper or financially unsafe operation of the primary company under IC 27-1-3-19.

(e) Subsections (e) and (f) apply only to primary companies authorized to make the kind or kinds of insurance set out in Class I, enumerated in IC 27-1-5-1 (referred to in these subsections as a "Class I primary company," a "primary company," or the plural of either). A Class I primary company may invest amounts in excess of the applicable percentage limitations in IC 27-1-12-2(23) in any subsidiary company whose business, operated directly or through its subsidiaries:

(1) is devoted entirely to the making of all or any one (1) or more of the kinds of insurance and reinsurance authorized by the laws of the state, if the subsidiary company is incorporated under Indiana law, or the law of a jurisdiction which the commissioner determines has comparable or more restrictive investment limitations than Indiana; or

(2) is of a nature which the primary company could engage in directly, other than the making of such insurance or reinsurance.

However, investments owned by each subsidiary company qualifying under subdivision (2) directly or through a chain of subsidiaries, shall be attributed to the primary company for purposes of determining the primary company's compliance with the other provisions of IC 27-1-12-2. Attribution of these investments to the primary company shall be made on its percentage direct ownership of the subsidiary company, or the percentage indirect ownership of each other company in the chain of subsidiaries. Primary company investments in any other subsidiary company or companies are limited to the applicable aggregate percentage limitations set out in IC 27-1-12-2(23).

(f) In the event a Class I primary company on account of its investments in subsidiary companies fails at any time to meet the applicable percentage limitations set out in IC 27-1-12-2(23), as modified by subsection (e), the

commissioner may order the divestiture of any subsidiary company or order other actions by the primary or subsidiary company so that the total investment by the primary company does not exceed these limitations. The commissioner may for any definite or indefinite period permit the continuation of any subsidiary company without divestiture, with or without any other required action, if the commissioner determines that continuation will not tend to impair the capital or surplus fund of the primary company or make its operation unsafe or that continuation is necessary considering the financial needs of the primary company.

(g) At any time after the relationship of primary and subsidiary companies has been established, it may be freely terminated by the act of the primary company in reducing its ownership of voting capital stock of the subsidiary company to fifty percent (50%) or below of the total outstanding voting stock of such subsidiary company.

(h) In addition to rules adopted under IC 27-1-3-7, the commissioner may adopt under IC 4-22-2 rules:

- (1) prescribing the methods, standards, matters, and forms to be used in making the examinations and reports required by subsection (d);
- (2) defining the kinds of conduct by a subsidiary company that would tend to impair the capital or surplus fund of the primary company or otherwise make its operations financially unsafe; and
- (3) prescribing the methods for attributing investment in a subsidiary company or chain of subsidiaries to a primary company. [Acts 1957, ch. 55, § 3; 1969, ch. 186, § 2; 1979, P.L. 254, § 3; P.L.258-1983, § 1; P.L.185-1997, § 6.]

27-2-9-3. Establishment of subsidiary company by domestic insurance company — Requirements — Examination by commissioner [as amended by P.L.186-1997]. — (a) A domestic insurance company may establish by organization or acquisition of voting stock, a domestic, foreign, or alien subsidiary company to conduct any lawful kind of business permitted by the law under which the subsidiary company is created, if the establishment meets the limitations of this section. Ownership of a subsidiary company permitted by this section constitutes a permitted power of a primary company under IC 27-1-7-2 or any other statute under which the primary company is organized, unless its articles of incorporation prohibit its establishment of subsidiary companies.

(b) The primary company, at the time of establishing a subsidiary company, shall possess assets of not less than twenty-five million dollars (\$25,000,000); or combined capital and surplus in the case of a stock company, or surplus in the case of a mutual company, of not less than three million five hundred thousand dollars (\$3,500,000). However, where the primary company is establishing a subsidiary company qualifying under subsection (e)(1), these minimum amounts shall be increased by the aggregate amount of the primary company's investment in all its subsidiary companies qualified under subsection (e)(1), including the one being established.

(c) The primary company shall file with the commissioner a certified copy of the resolution of its board of directors approving the establishment of the

subsidiary company. If the subsidiary company is authorized to conduct a business, other than the business of making insurance or reinsurance pursuant to a certificate issued by the Indiana insurance commissioner or to a comparable grant of authority by an insurance official or officials in the jurisdiction of the subsidiary company's incorporation, the primary company shall also file with the commissioner a summary description of the business to be carried on by the subsidiary company. The commissioner shall grant approval for such establishment in writing if the commissioner determines that there has been compliance with the conditions and requirements of this section.

(d) The department shall have the power to conduct periodic examinations and require reports reflecting the effect of the condition and operation of subsidiary companies on the financial condition of the primary company. A noninsurance subsidiary company is required to annually furnish the department financial statements prepared under generally accepted accounting principles and certified by an independent certified public accountant, and the department is authorized to rely upon such statements. The department may also make any additional examination or require any other reports with respect to any subsidiary company necessary to carry out the department's administration of this section. If any subsidiary company is conducting its business in a manner that would clearly tend to impair the capital or surplus fund of the primary company or otherwise make the operation of the primary company financially unsafe, the department shall have the same powers to act with respect to the primary company as it would have with respect to any comparable improper or financially unsafe operation of the primary company under IC 27-1-3-19.

(e) Subsections (e) and (f) apply only to primary companies authorized to make the kind or kinds of insurance set out in Class I, enumerated in IC 27-1-5-1 (referred to in these subsections as a "Class I primary company", a "primary company", or the plural of either). A Class I primary company may invest amounts in excess of the applicable percentage limitations in IC 27-1-12-2(b)(23) in any subsidiary company whose business, operated directly or through its subsidiaries:

- (1) is devoted entirely to the making of all or any one (1) or more of the kinds of insurance and reinsurance authorized by the laws of the state, if the subsidiary company is incorporated under Indiana law, or the law of a jurisdiction which the commissioner determines has comparable or more restrictive investment limitations than Indiana; or
- (2) is of a nature which the primary company could engage in directly, other than the making of such insurance or reinsurance.

However, investments owned by each subsidiary company qualifying under subdivision (2) directly or through a chain of subsidiaries, shall be attributed to the primary company for purposes of determining the primary company's compliance with the other provisions of IC 27-1-12-2. Attribution of these investments to the primary company shall be made on its percentage direct ownership of the subsidiary company, or the percentage indirect ownership of each other company in the chain of subsidiaries. Primary company investments in any other subsidiary company or companies are

limited to the applicable aggregate percentage limitations set out in IC 27-1-12-2(b)(23).

(f) In the event a Class I primary company on account of its investments in subsidiary companies fails at any time to meet the applicable percentage limitations set out in IC 27-1-12-2(b)(23), as modified by subsection (e), the commissioner may order the divestiture of any subsidiary company or order other actions by the primary or subsidiary company so that the total investment by the primary company does not exceed these limitations. The commissioner may for any definite or indefinite period permit the continuation of any subsidiary company without divestiture, with or without any other required action, if the commissioner determines that continuation will not tend to impair the capital or surplus fund of the primary company or make its operation unsafe or that continuation is necessary considering the financial needs of the primary company.

(g) At any time after the relationship of primary and subsidiary companies has been established, it may be freely terminated by the act of the primary company in reducing its ownership of voting capital stock of the subsidiary company to fifty percent (50%) or below of the total outstanding voting stock of such subsidiary company.

(h) In addition to rules adopted under IC 27-1-3-7, the commissioner may adopt under IC 4-22-2 rules:

- (1) prescribing the methods, standards, matters, and forms to be used in making the examinations and reports required by subsection (d);
- (2) defining the kinds of conduct by a subsidiary company that would tend to impair the capital or surplus fund of the primary company or otherwise make its operations financially unsafe; and
- (3) prescribing the methods for attributing investment in a subsidiary company or chain of subsidiaries to a primary company. [Acts 1957, ch. 55, § 3; 1969, ch. 186, § 2; 1979, P.L. 254, § 3; P.L.258-1983, § 1; P.L.186-1997, § 10.]

Compiler's Notes. This section was separately amended by P.L.185-1997, § 6, and P.L.186-1997, § 10. Though the introductory language of P.L.186-1997, § 10, refers to P.L.185-1997, it does not contain the amend-

ments made by that act. Therefore, this section is set out as amended by each act.

Cross References. Prepaid health care delivery plans, IC 27-8-7.

27-2-9-4. Primary and subsidiary companies separate and distinct entities. — The primary and subsidiary companies shall in all respects stand before the law as separate and distinct companies, with neither of such companies having any liability to the creditors, policyholders or stockholders of the other, any acts or omissions of the officers, directors, stockholders or members of either or both of such companies notwithstanding. [Acts 1957, ch. 55, § 4.]

Collateral References. Liability of corporation for contracts of subsidiary. 38 A.L.R.3d 1102.

Liability of corporation for torts of subsidiary. 7 A.L.R.3d 1343.

27-2-9-5. Directors and officials of primary and subsidiary companies may be identical. — The boards of directors and officers of the primary and subsidiary companies may be identical, or different in whole or in part. In any case, the affairs of each company shall be carried on separately, in keeping with their respective positions before the law as distinct companies. [Acts 1957, ch. 55, § 5.]

27-2-9-6. Acquiring voting stock of another company — Law governing. — The acquisition by an insurance company of voting stock of another company, for the purpose of establishing a primary and subsidiary relationship, shall be subject to the limitations and conditions of any investment law applicable to the primary company. [Acts 1957, ch. 55, § 6; 1969, ch. 186, § 3.]

Cross References. Subsidiaries, acquisition of stock by parent, IC 27-3-3.

27-2-9-7. Establishment of more than one subsidiary company. — While in terms this chapter treats of the establishment of a single subsidiary company, more than one (1) such company may be established by a primary company. [Acts 1957, ch. 55, § 7; P.L.252-1985, § 131.]

27-2-9-8. Same treatment of foreign, alien and subsidiary companies. — It shall be the policy of the state of Indiana to treat foreign or alien primary and subsidiary companies in the same manner as other foreign or alien companies, except that such treatment may be withheld or suspended with respect to a primary or subsidiary company domiciled in a state which does not accord to primary and subsidiary companies of this state equality with companies, foreign, alien or domestic, doing business in such foreign state. [Acts 1957, ch. 55, § 8; 1969, ch. 186, § 4.]

27-2-9-9. Registry of stock of subsidiary company. — The stock of a subsidiary company owned by a primary company shall be registered in the name of the primary company except for such shares as are required to be registered in the names of other persons in order to fulfill statutory requirements. [Acts 1957, ch. 55, § 9.]

CHAPTER 10

EQUITY SECURITIES OF INSURANCE COMPANIES

SECTION.

- 27-2-10-1. Securities of domestic stock insurance companies — Statements of owners, officers and directors.
- 27-2-10-2. Sale or purchase of equity securities — Prevention of unfair use of information — Exceptions.
- 27-2-10-3. Requirements for sale of equity securities.
- 27-2-10-4. Sale of equity securities of domes-

SECTION.

- tic stock insurance companies by dealers.
- 27-2-10-5. Sale of equity securities — Foreign or domestic arbitrage transactions.
- 27-2-10-6. Equity security defined.
- 27-2-10-7. Equity securities — Effect of registration.
- 27-2-10-8. Rules and regulations.
- 27-2-10-9. Chapter supplemental.

27-2-10-1. Securities of domestic stock insurance companies — Statements of owners, officers and directors. — Every person who is directly or indirectly the beneficial owner of more than ten per cent (10%) of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the insurance commissioner of Indiana on or before December 31, 1965, or within ten (10) days after he becomes such beneficial owner, director, or officer, a statement, in such form as the insurance commissioner may prescribe, of the amount of all equity securities of such company of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file in the office of the insurance commissioner a statement, in such form as the commissioner may prescribe, indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month. [Acts 1965, ch. 5, § 1.]

27-2-10-2. Sale or purchase of equity securities — Prevention of unfair use of information — Exceptions. — For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to such domestic stock insurance company, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such company within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the company, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company, or by the owner of any security of the company in the name and in behalf of the company if the company shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized. This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the insurance commissioner by rules and regulations may exempt as not comprehended within the purpose of this section. [Acts 1965, ch. 5, § 2.]

Collateral References. Violation of securities regulations as ground of disciplinary action against attorney. 18 A.L.R.3d 1408.

27-2-10-3. Requirements for sale of equity securities. — It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such domestic insurance company if the person selling the security or his principal (i) does not own the security

sold, or (ii) if owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this section if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense. [Acts 1965, ch. 5, § 3.]

27-2-10-4. Sale of equity securities of domestic stock insurance companies by dealers. — The provisions of section 2 [IC 27-2-10-2] of this chapter shall not apply to any purchase and sale, or sale and purchase, and the provisions of section 3 [IC 27-2-10-3] of this chapter shall not apply to any sale, of an equity security of a domestic stock insurance company not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq.) for such security. The insurance commissioner may, by such rules as he deems necessary or appropriate and in the public interest, define and prescribe terms and conditions with respect to equity securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market. [Acts 1965, ch. 5, § 4; P.L.252-1985, § 132.]

Collateral References. Who is “dealer” of successive transactions, and the like. 6 under state securities acts exempting sales by A.L.R.3d 1425.
owners other than issuers not made in course

27-2-10-5. Sale of equity securities — Foreign or domestic arbitrage transactions. — The provisions of sections 1, 2, and 3 [IC 27-2-10-1, IC 27-2-10-2 and IC 27-2-10-3] of this chapter shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules as the insurance commissioner may adopt in order to carry out the purposes of this chapter. [Acts 1965, ch. 5, § 5; P.L.252-1985, § 133.]

27-2-10-6. Equity security defined. — The term “equity security,” when used in this chapter, means any stock or similar security, or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security, or any such warrant or right, or any other security which the insurance commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest or for the protection of investors, to treat as an equity security. [Acts 1965, ch. 5, § 6; P.L.252-1985, § 134.]

27-2-10-7. Equity securities — Effect of registration. — The provisions of sections 1, 2, and 3 [IC 27-2-10-1, IC 27-2-10-2 and IC 27-2-10-3] of this chapter shall not apply to transactions in equity securities of a domestic stock insurance company if:

(a) Such securities shall be registered, or shall be required to be registered, pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), as amended; or

(b) Such domestic stock insurance company shall not have any class of its equity securities held of record by one hundred (100) or more persons on the last business day of the year next preceding the year in which equity securities of the company would be subject to the provisions of sections 1, 2, and 3 of this chapter except for the provisions of this subdivision. [Acts 1965, ch. 5, § 7; P.L.252-1985, § 135; P.L.3-1989, § 153.]

27-2-10-8. Rules and regulations. — The insurance commissioner shall have the power to make such rules as may be necessary for the execution of the functions vested in him by sections 1 through 7 [IC 27-2-10-1 through IC 27-2-10-7] of this chapter and may for such purpose classify domestic stock insurance companies, securities, and other persons or matters within his jurisdiction. No provision of sections 1, 2, and 3 [IC 27-2-10-1, IC 27-2-10-2 and IC 27-2-10-3] of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule of the insurance commissioner, notwithstanding that such rule may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [Acts 1965, ch. 5, § 8; P.L.252-1985, § 136.]

27-2-10-9. Chapter supplemental. — This chapter shall be construed as supplemental to IC 27-1. [Acts 1965, ch. 5, § 9; P.L.252-1985, § 137; P.L.11-1987, § 30.]

CHAPTER 11

TENDER OFFERS FOR VOTING STOCK

27-2-11-1 — 27-2-11-3. [Repealed.]

Compiler's Notes. This chapter, dealing with offers to buy stock by one who will own more than 40% and exceptions thereto, was repealed by Acts 1971, P.L. 387, § 2.

CHAPTER 11.1

MINORS

SECTION.

27-2-11.1-1. Persons over eighteen years —
Contract for insurance.

27-2-11.1-2. Discharge or assignments under

insurance or settlement agreements.

27-2-11.1-1. Persons over eighteen years — Contract for insurance. — No person eighteen (18) years of age or over is incompetent because of age to contract for any insurance or exercise every right, privilege and

benefit provided by any insurance contract. [IC 1973, 27-2-11.1-1, as added by Acts 1973, P. L. 275, § 5.]

Cross References. Insurance contracts by or for the benefit of persons under age eighteen, IC 27-1-12-15.

27-2-11.1-2. Discharge or assignments under insurance or settlement agreements. — No person eighteen (18) years of age or over is incompetent because of age to receive and give full acquittance and discharge for payments or execute assignments under the provisions of an insurance contract or under the provisions of a settlement agreement executed in connection with any such contract of insurance. [IC 1973, 27-2-11.1-2, as added by Acts 1973, P.L. 275, § 5.]

NOTES TO DECISIONS

Subrogation.

A minor child who, having been injured in an automobile accident, received compensation both under his parents' group insurance policy and in settlement of a personal injury

action was bound by the subrogation clause in the insurance policy. *Hagerman v. Mutual Hosp. Ins.*, 175 Ind. App. 293, 60 Ind. Dec. 409, 371 N.E.2d 394 (1978).

CHAPTER 13

ARSON REPORTING

SECTION.

27-2-13-1. Definitions.

27-2-13-2. Duty of insurer investigating loss to release or furnish information.

27-2-13-3. Insurer's duty to notify authorized agency.

SECTION.

27-2-13-4. Exchanges of information — Immunity.

27-2-13-5. Withholding insurance proceeds on arson suspicion.

27-2-13-1. Definitions. — As used in this chapter:

(a) "Authorized agency" means:

- (1) The office of the state fire marshal or a fire department acting under IC 36-8-17;
- (2) The superintendent of the state police;
- (3) The prosecuting attorney responsible for prosecutions in the county where the fire occurred;
- (4) The attorney general; and
- (5) An arson investigator.

(b) "Relevant" refers to information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of a fire loss more probable or less probable than it would have been without the evidence.

(c) "Insurer" has the same meaning as in IC 27-1-2-3(x) and includes the Indiana FAIR plan.

(d) "Arson investigator" means an officer of a unit of local government whose duties include the investigation of arson. [IC 27-2-13-1, as added by Acts 1979, P.L. 253, § 1; P.L.139-1984, § 1; P.L.245-1987, § 16.]

Compiler's Notes. There is no Chapter 12 in this article.

Collateral References. 43 Am. Jur. 2d Insurance § 493.

27-2-13-2. Duty of insurer investigating loss to release or furnish information. — (a) An authorized agency charged with the responsibility of investigating a fire loss may, in writing, request that an insurer investigating that loss release to the requesting agency any or all relevant information or evidence considered important to the authorized agency, including:

- (1) Pertinent insurance policy information relevant to a fire loss under investigation and any application for that policy;
- (2) Policy premium payment records;
- (3) History of previous claims made by the insured; and
- (4) Material relating to the investigation of the loss, including:
 - (A) Statements of any person;
 - (B) Proof of loss; and
 - (C) Other evidence relevant to the investigation.

(b) An insurer shall furnish information requested under this section to the requesting authorized agency. [IC 27-2-13-2, as added by Acts 1979, P.L. 253, § 1; P.L.139-1984, § 2.]

27-2-13-3. Insurer's duty to notify authorized agency. — (a) When an insurer has reason to believe that a fire loss in which it has an interest was caused by a means that was not accidental, then, for the purpose of notification and for having that fire loss investigated, the company shall, in writing, notify an authorized agency and provide that agency with all material developed from the insurer's inquiry into the fire loss.

(b) When an insurer provides an authorized agency with notice of a fire loss, it shall be considered sufficient notice for the purpose of this chapter. However, the insurer shall provide the office of the state fire marshal a copy of the information provided under subsection (a), if the notice was provided to an authorized agency other than the office of the state fire marshal. [IC 27-2-13-3, as added by Acts 1979, P.L. 253, § 1; P.L.139-1984, § 3; P.L.245-1987, § 17.]

27-2-13-4. Exchanges of information — Immunity. — (a) An authorized agency provided with information under this chapter may release or provide that information to any other authorized agency to further its investigation.

(b) An insurer providing information to an authorized agency under section 3 [IC 27-2-13-3] of this chapter has the right to request and to receive from that agency relevant information. The agency shall provide the requested information within a reasonable time, not to exceed thirty (30) days from the date of the request.

(c) An insurer (or a person acting on its behalf) or an authorized agency who releases or provides evidence or information under this chapter is immune from any civil or criminal liability for providing the evidence or information. [IC 27-2-13-4, as added by Acts 1979, P.L. 253, § 1; P.L.139-1984, § 4.]

27-2-13-5. Withholding insurance proceeds on arson suspicion. — An authorized agency that is investigating a fire believed to have been caused by arson may, in writing, order an insurer to withhold payment of the proceeds of an insurance policy on the damaged or destroyed property for up to thirty (30) days from the date of the order. The insurer may not make a payment during that time, except for payments:

- (1) For emergency living expenses;
- (2) For emergency action necessary to secure the premises;
- (3) Necessary to prevent further damage to the premises; or
- (4) To a mortgagee who is not the target of investigation by the authorized agency. [P.L.247-1989, § 1.]

Compiler’s Notes. P.L.247-1989, § 4, provides that this section applies only to insurance policies issued or renewed after June 30, 1989.

CHAPTER 14
VEHICLE THEFT REPORTING

SECTION.

- 27-2-14-1. Definitions.
- 27-2-14-2. Fraudulent vehicle theft claim.
- 27-2-14-3. Investigation of vehicle theft — Release of information.

SECTION.

- 27-2-14-4. Sharing of information pertinent to investigation among authorized agencies.

27-2-14-1. Definitions. — As used in this chapter:

“Authorized agency” means the state police, the prosecuting attorney responsible for prosecutions in the county where the theft occurred, or any law enforcement agency.

“Insurer” means an insurance company.

“Relevant” means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of an allegedly fraudulent vehicle theft claim more probable or less probable than it would have been without the evidence. [IC 27-2-14-1, as added by Acts 1981, P.L. 246, § 1.]

Collateral References. What constitutes theft within automobile theft insurance policy—modern cases. 67 A.L.R.4th 82.

27-2-14-2. Fraudulent vehicle theft claim. — If an insurer has reason to believe that a vehicle theft claim made by an insured is fraudulent, the insurer shall:

- (1) Notify, in writing, an authorized agency of the suspected fraudulent claim; and
- (2) Provide the agency with all material developed from the insurer’s inquiry into the claim. [IC 27-2-14-2, as added by Acts 1981, P.L. 246, § 1.]

27-2-14-3. Investigation of vehicle theft — Release of information. — An authorized agency charged with the responsibility of investigating a vehicle theft may, in writing, require an insurer investigating that loss to

release to the requesting agency any or all relevant information or evidence considered important to the authorized agency including:

- (1) Pertinent insurance policy information relevant to the theft under investigation and any application for that policy;
- (2) Policy premium payment records;
- (3) History of previous claims made by the insured; and
- (4) Material relating to the investigation, including:
 - (A) Statements of any person;
 - (B) Proof of loss; and
 - (C) Other evidence relevant to the investigation.

[IC 27-2-14-3, as added by Acts 1981, P.L. 246, § 1.]

27-2-14-4. Sharing of information pertinent to investigation among authorized agencies. — (a) An authorized agency provided with information under this chapter may release or provide that information to any other authorized agency to further its investigation.

(b) An insurer providing information to an authorized agency under section 2 or section 3 [IC 27-2-14-2 or IC 27-2-14-3] of this chapter has the right to request and to receive from that agency relevant information. The agency shall provide the requested information within a reasonable time, not to exceed thirty (30) days from the date of the request.

(c) An insurer (or a person acting on its behalf) or an authorized agency that releases or provides evidence or information under this chapter is immune from any civil or criminal liability for providing such evidence or information. [IC 27-2-14-4, as added by Acts 1981, P.L. 246, § 1.]

CHAPTER 15

AVAILABLE INSURANCE PROCEEDS SET ASIDE

SECTION.

- 27-2-15-1. "Available insurance proceeds" defined.
- 27-2-15-2. "City" defined.
- 27-2-15-3. "Enforcement authority" defined.
- 27-2-15-4. "Insurer" defined.
- 27-2-15-4.5. Notice to enforcement authority of policy covering damaged building or structure by insurer.

SECTION.

- 27-2-15-5. Notice by enforcement authority — Remittance by insurer — Escrow account.
- 27-2-15-6. Claims against insurance proceeds.
- 27-2-15-7. Immunity of complying insurer.
- 27-2-15-8. Effect of payment into escrow.
- 27-2-15-9. Immunity of public officials.
- 27-2-15-10. Rules.

27-2-15-1. "Available insurance proceeds" defined. — As used in this chapter, "available insurance proceeds" means the proceeds payable under an insurance policy based upon a claim for damage to or loss of a building or other structure caused by fire or explosion, minus proceeds paid to:

- (1) The insured for emergency living expenses;
- (2) Take emergency action necessary to secure the premises;
- (3) Prevent further damage to the premises; or
- (4) A lienholder or mortgagee who is not the target of an investigation by an authorized agency (as defined in IC 27-2-13-1). [P.L.247-1989, § 2.]

Collateral References. 44 Am. Jur. 2d, Insurance, § 1700 et seq.
46 C.J.S., Insurance, § 1389 et seq.

27-2-15-2. "City" defined. — As used in this chapter, "city" refers to a first class or second class city, as classified under IC 36-4-1-1. [P.L.247-1989, § 2.]

Compiler's Notes. According to IC 36-4-1-1 and the 1990 federal census, the only city of the first class is Indianapolis.

According to IC 36-4-1-1 and the 1990 federal census, second-class cities are Anderson,

Bloomington, East Chicago, Elkhart, Evansville, Fort Wayne, Gary, Hammond, Kokomo, Lafayette, Marion, Michigan City, Mishawaka, Muncie, New Albany, Richmond, South Bend and Terre Haute.

27-2-15-3. "Enforcement authority" defined. — As used in this chapter, "enforcement authority" has the meaning set forth in IC 36-7-9-2. [P.L.247-1989, § 2.]

27-2-15-4. "Insurer" defined. — As used in this chapter, "insurer" means a fire and marine insurance company, as defined in IC 27-1-2-3(u). [P.L.247-1989, § 2.]

27-2-15-4.5. Notice to enforcement authority of policy covering damaged building or structure by insurer. — (a) As used in this section, "city" refers to a city having a population of more than thirty-five thousand (35,000) that is located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) An insurer that issued an insurance policy covering a building or other structure that is:

- (1) Located in a city; and
- (2) Damaged by a fire or explosion;

shall notify the enforcement authority of the city about the existence of the policy. However, an insurer is not required to notify the enforcement authority under this section if the policy issued by the insurer is not in effect at the time of the fire or explosion that damages the building or structure.

(c) The insurer shall provide the notice required under this section if the enforcement authority makes a request for the notice within twenty (20) days after the damage occurs.

(d) The notice required by this section must:

- (1) Be in writing;
- (2) Identify the insurer and state the insurer's address;
- (3) Identify the building or structure and state the location of the building or structure; and
- (4) Disclose the nature and extent of the coverage of the building or structure provided by the policy.

(e) An insurer shall provide notice to the enforcement authority under this section within ten (10) days after the insurer is notified under subsection (c) of the damaging of the building or structure by fire or explosion.

(f) The commissioner may take action under IC 27-1-3-10 and IC 27-1-3-19 against an insurer that violates this section. [P.L.123-1992, § 1.]

Compiler's Notes. According to the 1990 federal census, the county having a population of more than 400,000 but less than 700,000 is Lake. The cities in that county having a population of more than 35,000 are Gary and Hammond.

27-2-15-5. Notice by enforcement authority — Remittance by insurer — Escrow account. — (a) If:

- (1) A fire or explosion damages a building or other structure located in a city; and
- (2) The enforcement authority of the city certifies to an insurer that issued a policy covering the building or structure the amount of demolition or rehabilitation expenses that the city anticipates incurring or has incurred under IC 36-7-9 in connection with the building or structure;

the insurer shall remit to the city or the enforcement authority the amount determined under subsection (c).

(b) To require the remittance of money under this section, an enforcement authority must:

- (1) Provide the certification under subsection (a) within thirty (30) days after the fire or explosion that damages the building or structure; and
- (2) Comply with subsection (c).

However, it is not necessary for the enforcement authority to provide the certification within thirty (30) days after the fire or explosion if the insurer fails to provide notice to the enforcement authority under section 4.5 [IC 27-2-15-4.5] of this chapter within ten (10) days after the fire or explosion.

(c) The amount that must be remitted to the city or the enforcement agency under subsection (a) is the lesser of:

- (1) Fifteen percent (15%) of the available insurance proceeds, if any; or
- (2) An amount equal to the amount certified.

(d) The amount remitted under this section shall be placed in an interest bearing escrow account to be administered by the enforcement authority and the city. The insured shall be notified by the enforcement authority of the actions taken under this section. [P.L.247-1989, § 2; P.L.123-1992, § 2.]

27-2-15-6. Claims against insurance proceeds. — Upon a judgment being rendered under IC 36-7-9-13(c) or IC 36-7-9-13(d), the city is entitled to the available insurance proceeds set aside to the extent of the costs set forth in IC 36-7-9-12. All claims by the city against the available insurance proceeds must be made within one (1) year after the date of the fire or explosion or within one (1) year after the final outcome of a case or appeal initiated under IC 36-7-9, whichever is later. Proceeds in the escrow account that are not claimed in this manner shall be paid to the insured. [P.L.247-1989, § 2.]

27-2-15-7. Immunity of complying insurer. — An insurer complying with this chapter or attempting in good faith to comply with this chapter is immune from civil and criminal liability in connection with actions taken under this chapter, and those actions, including withholding payment of any insurance proceeds under this chapter or releasing or disclosing any information under this chapter, may not be considered to violate IC 27-4-1. [P.L.247-1989, § 2.]

27-2-15-8. Effect of payment into escrow. — Insurance proceeds set aside in an escrow account under section 5 [IC 27-2-15-5] of this chapter shall be considered as having been paid to the insured in satisfaction of any contractual liability under the policy. [P.L.247-1989, § 2.]

27-2-15-9. Immunity of public officials. — The state fire marshal, a deputy fire marshal, an enforcement authority, or an officer of a city complying with this chapter or attempting in good faith to comply with this chapter is immune from civil and criminal liability in connection with actions taken under this chapter. [P.L.247-1989, § 2.]

27-2-15-10. Rules. — The insurance commissioner may adopt rules under IC 4-22-2 necessary to implement this chapter. These rules must include a procedure for the administration of escrow accounts established under section 5 [IC 27-2-15-5] of this chapter, including the disposition of any funds in the escrow account not claimed under section 6 [IC 27-2-15-6] of this chapter. [P.L.247-1989, § 2.]

CHAPTER 16

INSURANCE CLAIM FORM NOTICE

SECTION.

27-2-16-1. Chapter supplemental to IC 27-1.

27-2-16-2. "Insurer" defined.

27-2-16-3. Required statement on claim forms.

SECTION.

27-2-16-4. Required statement on identification cards and benefit booklets.

27-2-16-1. Chapter supplemental to IC 27-1. — This chapter is supplemental to IC 27-1. [P.L.193-1991, § 1.]

Compiler's Notes. P.L.193-1991, § 4, effective July 1, 1991, provides: "IC 27-2-16, as added by this act, applies to policies first issued or renewed after June 30, 1991."

27-2-16-2. "Insurer" defined. — As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3(x). [P.L.193-1991, § 1.]

27-2-16-3. Required statement on claim forms. — (a) All preprinted claim forms provided by an insurer to a claimant that are required as a condition of payment of a claim must contain a statement that clearly states in substance the following:

"A person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony."

(b) The lack of a statement required under subsection (a) does not constitute a defense against a prosecution under IC 35-43-5-4(10). [P.L.193-1991, § 1.]

27-2-16-4. Required statement on identification cards and benefit booklets. — An insurer shall include on each identification card and on all benefit booklets that are delivered to an enrollee (as defined in IC 27-8-17-3)

whose policy requires a utilization review determination (as defined in IC 27-8-17-8) a printed statement in boldface 8 point type in the benefit booklets and in 6 point type on the identification cards that reads substantially as follows:

“NOTICE: Precertification or preauthorization does NOT guarantee coverage for or the payment of the service or procedure reviewed.”.

[P.L.132-1994, § 1.]

CHAPTER 17

DISCRIMINATION IN INSURANCE

SECTION.

27-2-17-1. “Commissioner” defined.

27-2-17-2. “Department” defined.

27-2-17-3. “Independent agent” defined.

27-2-17-4. “Property or casualty insurance” defined.

SECTION.

27-2-17-5. Applicability.

27-2-17-6. Discrimination prohibited — Investigations — Violation — Penalty.

27-2-17-1. “Commissioner” defined. — As used in this chapter, “commissioner” means the insurance commissioner of Indiana. [P.L.116-1994, § 48; P.L.130-1994, § 37.]

27-2-17-2. “Department” defined. — As used in this chapter, “department” means the department of insurance of Indiana. [P.L.116-1994, § 48; P.L.130-1994, § 37.]

27-2-17-3. “Independent agent” defined. — As used in this chapter, “independent agent” means an agent who:

(1) Represents an insurer in the sale of insurance as an independent contractor rather than as an employee; and

(2) Is not limited to representing:

(A) One (1) insurer; or

(B) Several insurers that are under common management.

[P.L.116-1994, § 48; P.L.130-1994, § 37.]

27-2-17-4. “Property or casualty insurance” defined. — As used in this chapter, “property or casualty insurance” means a type of insurance described in Class 2 and Class 3 of IC 27-1-5-1. However, the term does not mean insurance described in Class 2(a) of IC 27-1-5-1. [P.L.116-1994, § 48; P.L.130-1994, § 37.]

27-2-17-5. Applicability. — (a) This chapter applies to an insurer that obtains a certificate of authority under IC 27-1-3-20 as:

(1) A domestic insurer formed under IC 27-1-6;

(2) A foreign insurer that has become a domestic insurer under IC 27-1-6.5; or

(3) A foreign or an alien insurer under IC 27-1-17.

(b) An insurer that:

(1) Obtains a certificate of authority authorizing the insurer to provide property or casualty insurance in Indiana; and

(2) Provides property or casualty insurance covering risks in any location in Indiana; may not cancel or refuse to issue or renew a policy of property or casualty insurance based solely on the geographical location of the risk within Indiana. This subsection does not preclude an insurer from refusing to issue or renew or from canceling a policy based on sound underwriting or actuarial principles reasonably related to actual or anticipated loss experience or any other sound business purpose.

(c) If an insurer is found by the commissioner to have violated subsection (b), the commissioner may, after a hearing, suspend or revoke the certificate of authority of the insurer.

(d) Any determination made by the commissioner under this section is subject to IC 4-21.5.

(e) Except as provided in subsection (f), the department has exclusive jurisdiction to investigate any alleged violation of this section.

(f) Subsection (e) is not intended to restrict the jurisdiction, if any, the civil rights commission may have under IC 22-9-1-4. [P.L.116-1994, § 48; P.L.130-1994, § 37.]

27-2-17-6. Discrimination prohibited — Investigations — Violation — Penalty. — (a) An insurance company that issues property or casualty insurance shall not discriminate in the appointment of an independent agent on the basis of race, color, national origin, or gender.

(b) Except as provided in subsection (c), the department has exclusive jurisdiction to investigate any complaints of discrimination in the appointment of independent agents in violation of subsection (a).

(c) If the commissioner of the department determines after a hearing that an insurance company has violated subsection (a), the commissioner may order one (1) of the following remedies:

(1) Payment of a civil penalty of not more than two thousand dollars (\$2,000) for each violation.

(2) Suspension or revocation of the insurance company's certificate of authority if the commissioner determines that the violation was willful or wanton and that similar violations have been committed by that company with a frequency that constitutes a general business practice.

(3) Any other remedy agreed to by the department and the insurance company.

(d) Any determination made by the commissioner under this section is subject to IC 4-21.5.

(e) Findings of the department under this section may not be considered as evidence in any civil action other than an appeal as provided under IC 4-21.5. [P.L.116-1994, § 48; P.L.130-1994, § 37; P.L.2-1995, § 103.]

CHAPTER 18

DISCLOSURE OF MATERIAL TRANSACTIONS

SECTION.

27-2-18-1. "Asset acquisition" defined.

27-2-18-2. "Asset disposition" defined.

SECTION.

27-2-18-3. "Domicile" defined.

27-2-18-4. "Material acquisition" defined.

SECTION.

27-2-18-5. "Material disposition" defined.

27-2-18-6. Material revision of ceded reinsurance agreement — When reporting required — When reporting not required.

27-2-18-7. Report of transaction.

27-2-18-8. Time of filing report.

27-2-18-9. Copies of report to be filed with department and National Association of Insurance Commissioners.

27-2-18-10. Confidentiality of report — Release of information.

27-2-18-11. Disclosures in report of material asset acquisition or asset disposition.

SECTION.

27-2-18-12. Material acquisitions and dispositions on nonconsolidated basis — Report — Ceding of business to pool.

27-2-18-13. Disclosure on nonconsolidated basis of nonrenewal, cancellation, or revision of ceded reinsurance agreement.

27-2-18-14. Report of material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on nonconsolidated basis — Ceding of business to pool.

27-2-18-1. "Asset acquisition" defined. — (a) As used in this chapter, "asset acquisition" includes every purchase, lease, exchange, merger, consolidation, succession, or other acquisition.

(b) The term does not include the construction on or development of real property by or for the reporting insurer or the acquisition of materials for construction or development. [P.L.251-1995, § 17.]

27-2-18-2. "Asset disposition" defined. — As used in this chapter, "asset disposition" includes every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition. [P.L.251-1995, § 17.]

27-2-18-3. "Domicile" defined. — As used in this chapter, "domicile" means the following:

- (1) For a corporation, the state in which the purchasing group is incorporated.
- (2) For an unincorporated entity, the state of its principal place of business. [P.L.251-1995, § 17.]

27-2-18-4. "Material acquisition" defined. — As used in this chapter, "material acquisition" means an asset acquisition or a series of related asset acquisitions during any (30) day period that:

- (1) Is nonrecurring;
- (2) Is not in the normal course of business; and
- (3) Involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in the insurer's most recent statutory statement filed with the department. [P.L.251-1995, § 17.]

27-2-18-5. "Material disposition" defined. — As used in this chapter, "material disposition" means an asset disposition or a series of related asset dispositions during any thirty (30) day period that:

- (1) Is nonrecurring;
- (2) Is not in the normal course of business; and

(3) Involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in the insurer's most recent statutory statement filed with the department. [P.L.251-1995, § 17.]

27-2-18-6. Material revision of ceded reinsurance agreement — When reporting required — When reporting not required. — (a) As used in this chapter, "material nonrenewal, cancellation, or revision of a ceded reinsurance agreement" has the following meanings:

(1) When used in connection with property and casualty business, including accident and sickness insurance business written by a property and casualty insurer, the term means a nonrenewal, cancellation, or revision that affects:

(A) More than fifty percent (50%) of the insurer's total ceded written premium; or

(B) More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.

(2) When used in connection with life insurance or accident and sickness insurance business, the term means a nonrenewal, cancellation, or revision that affects more than fifty percent (50%) of the total reserve credit taken for business ceded on an annualized basis, as indicated in the insurer's most recent annual statement.

(b) The following events constitute a material revision of a ceded reinsurance agreement for property and casualty insurance, life insurance, or accident and sickness insurance business meeting the requirements of subsection (a) and must be reported:

(1) An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one (1) or more unauthorized reinsurers.

(2) Previously established collateral requirements have been reduced or waived as respects one (1) or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

(c) A nonrenewal, cancellation, or revision of a ceded reinsurance agreement is not material and a filing is not required under subsection (a) or (b) for the following:

(1) In connection with property and casualty business, including accident and sickness insurance business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of the insurer's total written premiums for direct and assumed business.

(2) In connection with life insurance or accident and sickness insurance business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement before any cession. [P.L.251-1995, § 17.]

27-2-18-7. Report of transaction. — (a) Except as provided in subsection (b), an insurer domiciled in Indiana shall file a report with the commissioner disclosing:

(1) A material acquisition;

(2) A material disposition; and

(3) A material nonrenewal, cancellation, or revision of a ceded reinsurance agreement.

(b) A report of a transaction described in subsection (a) does not have to be filed with the commissioner under this section if the transaction was previously submitted to the commissioner for review, approval, or information purposes under other provisions of IC 27, rules adopted by the department, or other requirements. [P.L.251-1995, § 17.]

27-2-18-8. Time of filing report. — The report required in section 7 [IC 27-2-18-7] of this chapter must be filed not later than fifteen (15) days after the end of the calendar month in which the transaction that requires the filing occurred. [P.L.251-1995, § 17.]

27-2-18-9. Copies of report to be filed with department and National Association of Insurance Commissioners. — One (1) complete copy of the report, including any exhibits or other attachments filed with the report, shall be filed with the:

(1) Department; and

(2) National Association of Insurance Commissioners.

[P.L.251-1995, § 17.]

27-2-18-10. Confidentiality of report — Release of information. —

(a) Except as provided in subsections (b) and (c), any report obtained by or disclosed to the commissioner under this chapter:

(1) Shall be confidential information; and

(2) Shall not, without the prior written consent of the insurer to which it pertains, be:

(A) Subject to subpoena; or

(B) Made public by the commissioner, the National Association of Insurance Commissioners, or any other person.

(b) A report obtained under this chapter may be made available to other departments of insurance in other states subject to IC 27-1-3-10.5.

(c) The commissioner may, after giving notice and an opportunity to be heard to the insurer that would be affected by the release of information under this chapter:

(1) Determine that the interests of policyholders, shareholders, or the public will be served by the publication of information in the report under section 7 [IC 27-2-18-7] of this chapter; and

(2) Publish all or any part of the information in such manner as the commissioner considers appropriate.

(d) The commissioner may not:

(1) Disclose; or

(2) Subject to subpoena;

financial information regarding material transactions disclosed by an insurer under this chapter. [P.L.251-1995, § 17.]

27-2-18-11. Disclosures in report of material asset acquisition or asset disposition. — The following information must be disclosed in any report of a material asset acquisition or asset disposition:

- (1) The date of the transaction.
- (2) The manner of the asset acquisition or asset disposition.
- (3) A description of the assets involved.
- (4) The nature and amount of the consideration given or received in connection with the asset acquisition or the asset disposition.
- (5) The purpose of or reason for the transaction.
- (6) The manner by which the amount of consideration was determined.
- (7) The gain or loss recognized or realized as a result of the transaction.
- (8) The name of each person from whom the assets were acquired or to whom the assets were disposed. [P.L.251-1995, § 17.]

27-2-18-12. Material acquisitions and dispositions on nonconsolidated basis — Report — Ceding of business to pool. —

(a) Insurers must report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that uses a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool.

(b) An insurer is considered to have ceded substantially all of its direct and assumed business to a pool under subsection (a) if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus. [P.L.251-1995, § 17.]

27-2-18-13. Disclosure on nonconsolidated basis of nonrenewal, cancellation, or revision of ceded reinsurance agreement. — The following information must be disclosed on a nonconsolidated basis in any report of a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement:

- (1) The effective date of the nonrenewal, cancellation, or revision.
- (2) The description of the transaction with an identification of the initiator of the transaction.
- (3) The purpose of or reason for the transaction.
- (4) If applicable, the identity of the replacement reinsurers.

[P.L.251-1995, § 17.]

27-2-18-14. Report of material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on nonconsolidated basis — Ceding of business to pool. — (a) An insurer must report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless:

- (1) The insurer is part of a consolidated group of insurers that uses a:
 - (A) Pooling arrangement; or
 - (B) One hundred percent (100%) reinsurance agreement;
- that affects the solvency and integrity of the insurer's reserves; and

(2) The insurer ceded substantially all of its direct and assumed business to the pool.

(b) An insurer is considered to have ceded substantially all of its direct and assumed business to a pool under subsection (a) if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus. [P.L.251-1995, § 17.]

CHAPTER 19

FRAUD INVESTIGATION INFORMATION EXCHANGE

SECTION.

27-2-19-1. "Governmental agency" defined.

27-2-19-2. "Insurer" defined.

27-2-19-3. "Law enforcement agency" defined.

27-2-19-4. "Person" defined.

27-2-19-5. "Political subdivision" defined.

27-2-19-6. Misrepresentation and fraud —

SECTION.

Release of information without authorization.

27-2-19-7. Immunity from liability.

27-2-19-8. Obtaining medical records and reports — Order of release.

27-2-19-9. Applicable law.

27-2-19-1. "Governmental agency" defined. — As used in this chapter, "governmental agency" means any:

- (1) department;
- (2) division;
- (3) public agency;
- (4) political subdivision; or
- (5) other public instrumentality;

of a political subdivision, the state of Indiana, or the federal government. [P.L.187-1996, § 1.]

Compiler's Notes. P.L.187-1996, § 2, effective July 1, 1996, provides: "IC 27-2-19, as added by this act, applies only to claims made

or a cause of action that arises after June 30, 1996."

27-2-19-2. "Insurer" defined. — As used in this chapter, "insurer" means a person who transacts a property and casualty insurance business. [P.L.187-1996, § 1.]

27-2-19-3. "Law enforcement agency" defined. — As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders. [P.L.187-1996, § 1.]

27-2-19-4. "Person" defined. — As used in this chapter, "person" includes individuals, corporations, associations, limited liability companies, and partnerships. [P.L.187-1996, § 1.]

27-2-19-5. “Political subdivision” defined. — As used in this chapter, “political subdivision” has the meaning set forth in IC 36-1-2-13. [P.L.187-1996, § 1.]

27-2-19-6. Misrepresentation and fraud — Release of information without authorization. — (a) Except as provided in subsections (b) and (c), a law enforcement agency, an insurer, or a governmental agency that has reason to believe that an application for insurance or a claim for insurance proceeds is being, or is likely to be, presented:

- (1) based upon misrepresentation; and
- (2) with intent to defraud;

is not required to obtain any authorization or release in order to receive or provide any information other than medical records and medical reports and medical related information contained in medical records and medical reports regarding or in any way potentially relating to that claim or application from or to any other law enforcement agency, insurer, or governmental agency.

(b) In claims for bodily injury, only information:

- (1) regarding the type of injury claimed;
- (2) regarding the date of the alleged injury;
- (3) regarding the name and address of each medical provider submitted to support the claimed injuries; and
- (4) referred to in subsection (a);

may be released without first obtaining authorization or a release from the injured claimant.

(c) Medical records and medical reports and medical related information contained in medical records and medical reports may not be released under this chapter without first obtaining authorization or a release from the injured claimant unless:

- (1) the claim is a bodily injury claim; and
- (2) the parties requesting the release have complied with section 8 [IC 27-2-19-8] of this chapter. [P.L.187-1996, § 1.]

27-2-19-7. Immunity from liability. — (a) As used in this section, “representative” includes:

- (1) a representative investigative agency; and
- (2) an attorney;

of a law enforcement agency, insurer, or governmental agency.

(b) Any:

- (1) law enforcement agency, insurer, or governmental agency; or
- (2) agent, employee, or representative of a law enforcement agency, insurer, or governmental agency;

that receives or provides information referred to in this chapter in good faith is immune from liability arising from the act of receiving or the act of providing the information. [P.L.187-1996, § 1.]

27-2-19-8. Obtaining medical records and reports — Order of release. — (a) A law enforcement agency, insurer, or governmental agency

who has obtained the names and addresses of a claimant's medical providers under section 6(b) [IC 27-2-19-6(b)] of this chapter may obtain the claimant's medical records and medical reports from any other law enforcement agency, insurer, or governmental agency:

- (1) with the prior authorization or release of the injured claimant; or
- (2) without the prior authorization or release of the injured claimant if:
 - (A) there is a reasonable belief that the mere request for authorization or a release will hinder a fraud investigation; and
 - (B) a verified application is presented to the circuit court in the county where the application or claim is presented that sets forth:
 - (i) probable cause for the need to obtain the medical records and medical reports and medical related information contained in the medical records and medical reports without obtaining the proper release or authorization; and
 - (ii) the specific medical records and medical reports and medical related information contained in the medical records and medical reports requested.

(b) The court, upon review of the information presented in subsection (a), may issue an order authorizing the law enforcement agency, insurer, or governmental agency to release the medical records and medical reports and the medical related information contained in the medical records and reports requested. [P.L.187-1996, § 1.]

27-2-19-9. Applicable law. — For the purpose of insurance fraud investigation, if another provision in Indiana law regarding the release or receipt of information conflicts with this chapter, this chapter governs and controls. [P.L.187-1996, § 1.]

ARTICLE 3

CONSOLIDATIONS AND REORGANIZATION

CHAPTER.

1. EXCHANGE OF SECURITIES, 27-3-1-1 — 27-3-1-7.
2. ASSESSMENT PLANS — REORGANIZATION INTO STOCK COMPANIES, 27-3-2-1 — 27-3-2-9.

CHAPTER.

3. ACQUISITIONS OF CERTAIN MINORITY INTERESTS IN SUBSIDIARY DOMESTIC STOCK INSURANCE COMPANIES, 27-3-3-1 — 27-3-3-5.

CHAPTER 1

EXCHANGE OF SECURITIES

SECTION.

- 27-3-1-1. Chapter supplemental to Insurance Law.
- 27-3-1-2. Adoption of plan of exchange.
- 27-3-1-3. Procedure for exchange.
- 27-3-1-4. Filing plan of exchange.
- 27-3-1-5. Effect of exchange.

SECTION.

- 27-3-1-6. Authorized insurance business and regulatory authority.
- 27-3-1-7. Domestic company and acquiring corporation separate and distinct entities.

27-3-1-1. Chapter supplemental to Insurance Law. — This chapter shall be supplemental to IC 27-1. All provisions of IC 27-1 shall be fully and completely applicable to this chapter in the same manner as if the provi-

sions of this chapter had been an original part of IC 27-1; Provided, That the provisions of this chapter shall be controlling in the event there exists any conflict between the provisions of this chapter and the provisions of IC 27-1. [Acts 1967, ch. 61, § 1; P.L.252-1985, § 138.]

Cross References. Holding companies, IC 27-1-23.

Merger and consolidation, IC 27-1-9.

Subsidiary companies, IC 27-2-9.

Opinions of Attorney General. There is no conflict between this act and the Securities

Act (IC 23-2-1-10 — IC 23-2-1-24) and this act does not take from the latter any jurisdiction that was delegated to it. The exchange provided in this act is an offer or sale within the meaning of that act, but falls within an exemption provided in it. 1967, No. 70, p. 489.

27-3-1-2. Adoption of plan of exchange. — Any domestic stock insurance company (referred to in this chapter as the “domestic company”) may adopt a plan of exchange providing for the exchange by its shareholders of their stock in the domestic company for:

- (i) Shares of stock issued by any other stock insurance corporation organized or reorganized under the provisions of IC 27-1 or any statute enacted prior to March 8, 1935, or any stock corporation organized under the provisions of IC 23-1 or any foreign stock corporation (such other corporation is referred to in this chapter as the “acquiring corporation”);
- (ii) Other securities issued by the acquiring corporation;
- (iii) Cash;
- (iv) Other consideration; or
- (v) Any combination of such stock, such other securities, cash, or other consideration. [Acts 1967, ch. 61, § 2; P.L.252-1985, § 139.]

27-3-1-3. Procedure for exchange. — (a) Subject to section 2 [IC 27-3-1-2] of this chapter, any domestic company may adopt a plan of exchange with any acquiring corporation providing for the exchange of the outstanding stock of the domestic company for shares of stock or other securities issued by the acquiring corporation or cash or other consideration or any combination thereof in the following manner. The boards of directors of the domestic company and of the acquiring corporation by resolutions approved by a majority of the whole of each such board shall adopt a plan of exchange which shall set forth the terms and conditions of the exchange and the mode of carrying the same into effect and such other provisions with respect to the exchange as may be deemed necessary or desirable.

(b) The domestic company and the acquiring corporation shall submit to the insurance commissioner three (3) copies of the plan of exchange certified by an officer of each as having been adopted in accordance with subsection (a). Such copies of the plan of exchange shall be accompanied by financial statements of the domestic company for its last preceding fiscal year prepared pursuant to IC 27-1-20-21, pro forma financial statements of each corporation based on the assumption that the plan of exchange was effective as proposed at the end of the last preceding fiscal year of the domestic company, an estimate of expenses already incurred and of expenses expected to be incurred in connection with the proposed plan of exchange, and a written statement which sets forth for each corporation the proposed

changes, if any, in management policies and in the identity of officers and directors of the domestic company and of the acquiring corporation which are initially contemplated should the plan of exchange be effected as proposed. The insurance commissioner shall hold a hearing upon the fairness of:

- (i) The terms, conditions, and provisions of the plan of exchange; and
- (ii) The proposed exchange of stock or other securities of the acquiring corporation or cash or other consideration or any combination thereof for the stock of the domestic company;

at which hearing the policyholders and the shareholders of both the domestic company and the acquiring corporation and any other interested party shall have the right to appear and to become party to the proceeding. The commissioner shall require the domestic company and the acquiring corporation to produce such evidence as he shall deem necessary to establish the foregoing, including in any event evidence concerning the valuation of the respective companies and the method utilized by the management of each corporation to accomplish such valuation, inclusive of the value established with respect to the stock of the domestic company which is proposed to be exchanged as well as the value of the stock, securities, and consideration other than cash to be offered by the acquiring corporation in such exchange. Such hearing shall be commenced not less than twenty (20) days after the date on which the plan of exchange is presented to the commissioner. The hearing shall be held in the city of Indianapolis, Indiana, at such place, date, and time as the insurance commissioner shall specify. Notice of the hearing shall be published in a newspaper of general circulation in the city or cities wherein are located the principal office of the domestic company and of the acquiring corporation and in the city of Indianapolis once a week for two (2) successive weeks. Written notice of the hearing shall be mailed at least ten (10) days prior to the hearing by the domestic company and by the acquiring corporation to all of their respective shareholders. All expenses of publication shall be borne by the domestic company or the acquiring corporation or both, as shall be specified in the plan of exchange. Except as otherwise provided in this section, the hearing and the determination made therein shall be subject to IC 4-21.5-3. The commissioner shall issue an order approving the plan of exchange as delivered to him by the domestic company and the acquiring corporation and such modifications therein as a majority of the whole board of directors of each such corporation shall approve if he finds:

- (i) That the plan, including all such modifications, if effected, will not tend adversely to affect the financial stability or management of the domestic company or the general capacity or intention to continue the safe and prudent transaction of the insurance business of the domestic company, or of the acquiring corporation, if it is a domestic insurance company;
- (ii) That the interests of the policyholders and shareholders of the domestic company, and, if the acquiring corporation is a domestic insurance company, the policyholders of the acquiring corporation are protected;

(iii) That the fulfillment of the plan will not affect either the contractual obligations of the domestic company and of the acquiring corporation, if it is a domestic insurance company, to its policyholders or the ability and tendency of either to render service to its policyholders in the future; and

(iv) That the terms and conditions of the plan of exchange and the proposed issuance and exchange are fair and reasonable.

The order of the commissioner approving or disapproving the plan of exchange shall be filed in the department within sixty (60) days after the date the plan of exchange is presented to him. The department shall give notice of such order in the manner prescribed in IC 4-21.5-3 to all parties to the proceeding, and the department shall endorse the commissioner's approval or disapproval on the plan of exchange in the manner provided in IC 27-1-6-8 and shall deliver copies thereof to the domestic company and to the acquiring corporation. Any party to such proceeding aggrieved by such order shall be entitled to a judicial review thereof in accordance with IC 4-21.5-5.

(c) The plan of exchange as approved by the insurance commissioner shall then be submitted to a vote of the shareholders of the domestic company at an annual or special meeting of the shareholders. Notice of the submission of the plan to the shareholders shall be included in the notice of such annual or special meeting. The shareholders entitled to vote in respect of the plan may vote in person or by proxy, and each such shareholder shall have one (1) vote for each share of voting stock held by him. Jointly owned shares shall only be voted jointly. The plan shall be approved by the shareholders of the domestic company upon receiving the affirmative votes representing two thirds ($\frac{2}{3}$) of the outstanding capital stock of the domestic company or such larger proportion as may be specified in the plan of exchange. Notwithstanding shareholder adoption of the plan of exchange and at any time prior to the filing of the certificate setting forth the plan of exchange by the department, pursuant to section 4 [IC 27-3-1-4] of this chapter, the plan of exchange may be abandoned pursuant to a provision for such abandonment, if any, contained in the plan of exchange.

(d) Within ten (10) days after the plan of exchange shall be adopted by the shareholders of the domestic company, a written notice of the adoption of the plan of exchange shall be mailed or delivered personally to each shareholder of record of such company who was entitled to vote thereon. The domestic company shall thereafter file with the department an affidavit of the secretary or an assistant secretary of such company or of an officer of the transfer agent of such company that such notice was given.

(e) Any shareholder of the domestic company owning shares not voted in favor of such plan at the meeting at which the plan was approved by the shareholders of the domestic company may object in writing to the plan and demand payment, should the plan become effective, of the fair value of any of such shares as of the day on which the plan of exchange was approved by the shareholders of the domestic company pursuant to subsection (c). Such objection and demand must be received, together with the certificate or certificates representing the shares with respect to which objection and

demand have been made for notation thereon that such objection and demand have been made, by the domestic company or its transfer agent within thirty (30) days after the date of said meeting of shareholders. No such objection and demand shall pertain to any shares which were voted in favor of the plan. Objection and demand can only be made jointly by the holders of any share jointly held. No such objection and demand may be withdrawn unless the domestic company, by a duly authorized officer, consents thereto in writing. Upon the plan of exchange becoming effective, the holder of any shares, with respect to which such objection and demand have been made and certificates for which have been delivered to the domestic company or its transfer agent for notation, or any transferee thereof, shall cease to be a shareholder of the domestic company with respect to such shares and shall have no rights with respect to such shares except the right to receive payment therefor in accordance with the provisions of this subsection. Every shareholder failing to make objection and demand accompanied by certificates representing the shares with respect to which such objection and demand have been made or withdrawing such objection and demand as provided in this subsection shall be conclusively presumed to have assented to, and to have agreed to be bound by, the plan of exchange in accordance with its terms. Within forty-five (45) days after the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders, the domestic company, or, if the plan of exchange so specifies, the acquiring corporation, shall mail a written offer to each holder of record of shares with respect to which an objection and demand have been made, as provided in this subsection, to pay for such shares a price per share deemed by such corporation to be the fair value thereof as of the date of such meeting. The form of written offer to be used, including the price per share, shall first be submitted to and approved by the insurance commissioner. If such offer is accepted in writing by such holder, such corporation shall pay such holder, within forty-five (45) days after the date of the plan of exchange becoming effective, such price upon the surrender of the certificate or certificates representing such shares. If within thirty (30) days after the date of the mailing of such written offer, the domestic company or the acquiring corporation, as the case may be, and a shareholder do not so agree, such corporation or the shareholder may, within ninety (90) days after the date of the mailing of such written offer, petition the circuit or the superior court of the county in which the principal office of the domestic company is located to appraise the fair value of such shares as of the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders; and payment of the appraised value thereof shall be made by the domestic company or, if the plan of exchange so specifies, the acquiring corporation within sixty (60) days after the entry of the judgment or order finding such appraised value upon the surrender of the certificate or certificates representing such shares. The practice, procedure, and judgment in the circuit or superior court upon such petition shall be the same, so far as practical, as that under IC 32-11. Such judgment of such circuit or superior court shall be final. All shares acquired by the

domestic company upon payment of the value therefor shall be canceled by the board of directors of the domestic company upon the plan of exchange becoming effective or at any time thereafter, and the capital stock of the domestic company shall be decreased in accordance with IC 27-1-8-12. If the plan of exchange does not become effective, the right of shareholders or transferees to be paid the fair value of their shares under this subsection shall cease, and their status shall be the same as that of shareholders who voted in favor of the plan. If a shareholder or his transferee with respect to any share or shares for which objection and demand has been made:

- (i) Withdraws such objection and demand in the manner provided by this subsection;
- (ii) Fails to submit a certificate or certificates at the time and in the manner required by this subsection;
- (iii) Does not file a petition for the determination of fair value within the time and in the manner provided in this subsection and neither the domestic company nor the acquiring corporation files a petition for such determination; or
- (iv) Is adjudged by a court of competent jurisdiction not to be entitled to the relief provided by this subsection;

then in any such event the right of the shareholder or his transferee to be paid the fair value of such share or shares under this subsection shall cease, and his status with respect to such share or shares shall be the same as that of a shareholder who voted in favor of the plan. [Acts 1967, ch. 61, § 3; P.L.252-1985, § 140; P.L.7-1987, § 143.]

27-3-1-4. Filing plan of exchange. — Not earlier than thirty-one (31) days after the date of the meeting of shareholders of the domestic company at which the plan of exchange was approved by such shareholders, a certificate setting forth the plan of exchange, the manner of the approval thereof by the directors of the acquiring corporation and the domestic company and the manner of its adoption and the vote by which adopted by the shareholders of the domestic company or setting forth that the plan of exchange has been abandoned shall be signed on behalf of each such corporation by its president or a vice-president and shall then be presented in triplicate to the department at its office for filing. The department shall file one (1) copy of such certificate in its offices and shall deliver copies bearing the date and time of filing endorsed thereon to the domestic company and the acquiring corporation. Upon the filing of such certificate, the plan of exchange and the issuance and exchange provided for therein shall become effective, unless a later date and time is specified in the plan of exchange, in which event the plan of exchange and the issuance and exchange provided for therein shall become effective upon such later date and time. [Acts 1967, ch. 61, § 4.]

27-3-1-5. Effect of exchange. — (a) Upon the plan of exchange becoming effective, the exchange provided for therein shall be deemed to have been consummated, each shareholder of the domestic company shall cease to be a shareholder of such company, the ownership of all shares of the issued and

outstanding stock of the domestic company, except shares payment of the value of which is required to be made by the domestic company or the acquiring corporation pursuant to section 3 [IC 27-3-1-3] of this chapter, shall vest in the acquiring corporation automatically without any physical transfer or deposit of certificates representing such shares, and all shares payment of the value of which is required to be made by the domestic company or the acquiring corporation pursuant to section 3 of this chapter shall be deemed no longer outstanding shares of the domestic company. The acquiring corporation shall thereupon become the sole shareholder of the domestic company and shall have all of the rights, privileges, immunities, and powers and, except as otherwise provided in this chapter, shall be subject to all of the duties and liabilities to the extent provided by law of a shareholder of an insurance company organized or reorganized under IC 27-1 or any statute enacted prior to March 8, 1935.

(b) Certificates representing shares of the domestic company prior to the plan of exchange becoming effective, except certificates representing shares payment of the value of which is required to be made pursuant to section 3 of this chapter and bearing a notation thereon that objection and demand pursuant to such section have been made, shall, after the plan of exchange becomes effective, represent:

(i) Shares of the issued and outstanding capital stock or other securities issued by the acquiring corporation; and

(ii) The right, if any, to receive such cash or other consideration upon such terms as shall be specified in the plan of exchange;

Provided, That the plan of exchange may specify that all certificates representing shares of stock of the domestic company, except certificates representing shares payment of the value of which is required to be made pursuant to section 3 of this chapter, shall after the plan of exchange becomes effective represent only the right to receive shares of stock or other securities issued by the acquiring corporation or cash or other consideration or any combination thereof upon such terms as shall be specified in the plan of exchange. Certificates representing shares of the domestic company with respect to which an objection and demand have been made pursuant to section 3 of this chapter and bearing a notation thereon that such objection and demand have been made, shall, after the plan of exchange becomes effective, represent only the right to receive payment therefor, subject to the provisions of this chapter. [Acts 1967, ch. 61, § 5; P.L.252-1985, § 141.]

27-3-1-6. Authorized insurance business and regulatory authority. — Nothing contained in this chapter shall be construed to authorize any insurance company to engage in any kind or kinds of insurance business not authorized by its articles of incorporation, or to authorize any acquiring corporation which is not an insurance company to engage directly in the business of insurance. Subsequent to the effective date of the plan of exchange, the insurance department, pursuant to the authority vested in it by IC 27-1-3-7 and IC 27-1-3.1 and having regard to the findings stated in section 3(b) [IC 27-3-1-3(b)] of this chapter, shall have the authority to require that the affairs of the domestic company be conducted in such

manner as to assure the continuing safe conduct and transaction of the domestic company's business of insurance. [Acts 1967, ch. 61, § 7; P.L.252-1985, § 142; P.L.26-1991, § 25.]

27-3-1-7. Domestic company and acquiring corporation separate and distinct entities. — The domestic company and the acquiring corporation shall in all respects stand before the law as separate and distinct corporations, with neither of such corporations having any liability to the creditors, policyholders, if any, or shareholders of the other, any acts or omissions of the officers, directors, or shareholders of either or both of such corporations notwithstanding. [Acts 1967, ch. 61, § 8.]

CHAPTER 2

ASSESSMENT PLANS — REORGANIZATION INTO STOCK COMPANIES

SECTION.

- 27-3-2-1. Authorization.
- 27-3-2-2. Notice to members of proposed change.
- 27-3-2-3. Subscription for stock.
- 27-3-2-4. By-laws — Directors.
- 27-3-2-5. Incorporation — Policies — Deposit of securities.

SECTION.

- 27-3-2-6. Officers — Election — Oaths — Bonds.
- 27-3-2-7. Applications on mutual or assessment plan not accepted.
- 27-3-2-8. Assets not to be divided.
- 27-3-2-9. Report of directors — Publication.

27-3-2-1. Authorization. — Any insurance company organized and doing business under the laws of this state on what is known as the assessment plan, and having more than one thousand (1,000) members, and a reserve fund of not less than one hundred thousand dollars (\$100,000), is hereby authorized subject to the limitations hereinafter contained, to issue stock in shares of fifty dollars (\$50.00) each, to an amount of not less than one hundred thousand (100,000) nor more than five hundred thousand dollars (\$500,000), and to receive subscriptions therefor. [Acts 1895, ch. 158, § 1, p. 372.]

Cross References. General Law for reorganization of stock or mutual companies, IC 27-1-11.

27-3-2-2. Notice to members of proposed change. — Before issuing any stock as provided in section 1 [IC 27-3-2-1] of this chapter, such company shall, at least four (4) weeks before the meeting provided for in this chapter, cause a printed notice of the time, place, and purpose of such meeting to be mailed to each of its members, and shall cause public notice to be given by publication thereof, at least once a week, for four (4) weeks, in a newspaper of general circulation in the county wherein is located the principal office of said company, that the proposal to issue stock in pursuance of this act [IC 27-3-2-1 — IC 27-3-2-9], will be submitted to the members of such company at a meeting to be held at a time and place to be named in such notice. If, after due mailing and publication of such notice, two-thirds ($\frac{2}{3}$) of all the members (present at such meeting), either in person or by proxy, shall vote in favor of a proposal to issue stock as

aforesaid, then the authority conferred by section 1 of this chapter, shall take effect, and subscription books may be opened. [Acts 1895, ch. 158, § 2, p. 372; P.L.252-1985, § 143.]

Compiler's Notes. The phrase "this act" to Acts 1895, ch. 158, which enacted this near the middle of this section probably refers chapter.

27-3-2-3. Subscription for stock. — Every person who is a member of such company on the day of such meeting shall, for thirty (30) days after the opening of subscription books as aforesaid, be entitled to subscribe to that proportionate number of shares of the capital stock, agreed upon to be issued, which the premium note or notes owing by such member and held by such company on unexpired policies, in force on the day of such meeting aforesaid, shall bear to the entire amount of such notes then held by such company, and upon the payment of such subscription, said note or notes shall be canceled and delivered to such members. If at the end of thirty (30) days from the opening of subscription books, the full amount of the capital stock designated has not been subscribed under the provisions of this section, then other subscriptions may be received, to be paid for as the directors of said company may require within eighteen (18) months. [Acts 1895, ch. 158, § 3, p. 372.]

27-3-2-4. By-laws — Directors. — When all the stock shall have been subscribed as aforesaid, the stockholders shall adopt by-laws for the government of such company not inconsistent with the laws of the state of Indiana, naming therein the number of directors, which shall not be less than seven (7) nor more than thirteen (13), who shall manage the affairs of said company, and shall at once elect the new directors for the ensuing year, a majority of whom shall constitute a quorum for the transaction of business. [Acts 1895, ch. 158, § 4, p. 372.]

27-3-2-5. Incorporation — Policies — Deposit of securities. — And thereupon, when all of said stock shall have been subscribed, a statement shall be filed with the secretary of state, and that officer shall give to such company a certificate of incorporation under his seal of office, declaring the corporate name of such company, the amount of capital stock, and the amount of securities deposited with the auditor of state [insurance commissioner], as hereinafter provided, the names of the directors who are to conduct the business of the company for the first year, and henceforth upon the payment to such officer of the fee provided by law to be paid for the incorporation of joint stock companies; and said company shall then become a body corporate, with the power and authority to sue and be sued as such, in any proper court, and such company may carry on the business of insuring property against loss or damage by fire, in a manner not inconsistent with the laws of this state, as a stock company: Provided, however, That before such company shall issue any policies of insurance, such company shall deposit in the office of the auditor of state [insurance commissioner] of Indiana, stocks, bonds or notes to be approved by said auditor [insurance commissioner], to the amount of twenty-five per cent (25%) of the capital

stock of said company, the interest on which is to be paid to said company: Provided, That the securities so held may be replaced by other securities to be first approved by said auditor [insurance commissioner], when by reason of their maturity or other good cause, it shall seem necessary or proper for the best interest of such company to replace them. [Acts 1895, ch. 158, § 5, p. 372.]

Compiler's Notes. The bracketed words "insurance commissioner" were inserted by the compiler. All rights, powers and duties conferred by law upon the auditor of state respecting the business of insurance were continued in full force and conferred upon the commissioner of insurance by section 2 of Acts 1919, ch. 48, p. 109, which was repealed by Acts 1935, ch. 162, § 276, p. 588, enacting the insurance law. All rights, powers and duties conferred by law upon the insurance department and the commissioner of insurance under prior acts were transferred by Acts 1935, ch. 162, § 24 to the department of insurance

by former IC 27-1-3-17. All the rights, powers and duties conferred by any law upon the department of insurance or insurance commissioner were transferred to the present department of insurance and insurance commissioner by Acts 1945, ch. 351, §§ 1-5, p. 1694 (IC 27-1-1).

Cross References. Duties and powers concerning insurance and insurance companies transferred to department of insurance, IC 27-1-1-1.

Financial statements, deposits of securities, IC 27-1-3-13, IC 27-1-20.

27-3-2-6. Officers — Election — Oaths — Bonds. — Said directors shall, upon the receipt by the company of said certificate of incorporation, immediately elect a president, vice-president, secretary and treasurer from their number, who shall be sworn to perform faithfully the duties of their respective offices, and who shall give bond for a sum and in a manner to be prescribed in the by-laws of such company. [Acts 1895, ch. 158, § 6, p. 372.]

27-3-2-7. Applications on mutual or assessment plan not accepted. — It shall not be obligatory upon any company, after the issuing of stock as aforesaid, to accept applications for insurance upon the mutual or assessment plan. [Acts 1895, ch. 158, § 7, p. 372.]

27-3-2-8. Assets not to be divided. — No part of the assets now possessed by such company, or that shall be possessed at the time of the meeting at which it is determined to issue stock, or which may be acquired in the interim, shall be divided among the members of such company, or be expended, except for the ordinary disbursements of such company made in the usual course of its business, including losses incurred upon its policies, but such assets shall remain and constitute as heretofore a fund in the hands of such company for the security of the holders of its policies. [Acts 1895, ch. 158, § 8, p. 372.]

27-3-2-9. Report of directors — Publication. — Such company shall, by its board of directors make a report, upon the first day of January of each year, of the condition of stock, showing the amount of capital stock, the number and amount of policies issued, the nature and kind of risks taken, the losses sustained, and the assets of every nature on hand or belonging to the company, which report shall be signed and sworn to by a majority of the directors of such company and published in a newspaper of general

circulation in the county in which the company shall have its principal office. [Acts 1895, ch. 158, § 9, p. 372.]

CHAPTER 3

ACQUISITIONS OF CERTAIN MINORITY INTERESTS IN SUBSIDIARY DOMESTIC STOCK INSURANCE COMPANIES

SECTION.

27-3-3-1. Definitions.

27-3-3-2. Acquisition of voting stock of subsidiary by parent corporation.

27-3-3-3. Dissent by subsidiary shareholder.

27-3-3-4. Parent and subsidiary insurer —

SECTION.

Separate and distinct corporations.

27-3-3-5. Method of acquisition under chapter additional.

27-3-3-1. Definitions. — As used in this chapter:

(a) "Commissioner" means the insurance commissioner of this state.

(b) "Domestic insurer" means a stock insurance company organized under the laws of this state.

(c) "Parent corporation" means a corporation organized for any purpose under the laws of this state or any other jurisdiction that owns, directly or indirectly, at least ninety percent (90%) of the issued and outstanding voting stock of a domestic insurer.

(d) "Subsidiary insurer" means a domestic insurer, at least ninety percent (90%) of the issued and outstanding voting stock of which is owned by a parent corporation.

(e) "Voting stock" means shares issued by a domestic insurer, the record holders of which are entitled to vote at each election of directors of the domestic insurer, and securities convertible into or evidencing a right to acquire the shares. [IC 1973, 27-3-3-1, as added by Acts 1973, P.L. 278, § 1; P.L.245-1989, § 2.]

Cross References. Acquisition of domestic company by other company or corporation, IC 27-3-1.

Indiana insurance holding company system, IC 27-1-23.

Subsidiary companies, IC 27-2-9.

27-3-3-2. Acquisition of voting stock of subsidiary by parent corporation. — [(a)] Any parent corporation may acquire all of the issued and outstanding voting stock of its subsidiary insurer not owned by the parent corporation in exchange for shares or other securities of the parent corporation, or cash, other consideration, or any combination of the foregoing, in the manner provided in this section. The board of directors of the parent corporation, by resolution approved by a majority of the whole board, shall adopt a plan of acquisition setting forth:

(1) The name of the subsidiary insurer;

(2) The designation and a description of the voting rights of each class, and any series thereof, of voting stock of the subsidiary insurer;

(3) The total number of issued and outstanding shares of each class, and any series thereof, of voting stock of the subsidiary insurer, the number of such shares owned by the parent corporation and, if either of the foregoing is subject to change prior to the proposed acquisition, the manner in which any change may occur;

(4) The terms and conditions of the acquisition, including the consideration to be paid and the proposed effective date of acquisition, and a statement clearly describing the rights of shareholders dissenting from the plan of acquisition;

(5) If the parent corporation is not authorized to do business in this state, its consent to the enforcement against it in this state of the rights of shareholders pursuant to the plan of acquisition or the rights of shareholders dissenting from that plan, and a designation of the commissioner as the agent upon whom process may be served against the parent corporation in any action or proceeding to enforce those rights; and

(6) Such other provisions with respect to the acquisition as the board of directors of the parent corporation deems necessary or appropriate.

(b) Upon adoption of a plan of acquisition, the parent corporation shall submit that plan to the commissioner in duplicate, certified by the secretary or an assistant secretary of the parent corporation as having been adopted in accordance with the provisions of this chapter. Within thirty (30) days from the date the plan is submitted to the commissioner, he shall endorse his approval or disapproval and the date thereof on both copies of the plan, file one (1) copy of the plan in his offices, and deliver the other copy to the parent corporation. No plan of acquisition shall take effect unless the approval of the commissioner has been obtained. The commissioner shall approve the plan of acquisition if he is satisfied that the plan complies with this chapter and that the terms and conditions of the plan of acquisition are fair and reasonable. If the commissioner disapproves the plan, he shall advise the parent corporation in writing of the reasons for his disapproval. The commissioner's disapproval of a plan of acquisition shall be subject to judicial review upon the petition of the parent corporation in accordance, so far as practical, with IC 4-21.5-5.

(c) If the commissioner approves the plan of acquisition, and if the plan has not been abandoned, the parent corporation shall deliver a copy of the plan or a summary thereof approved by the commissioner to each person who, as of the date of delivery, is a holder of record of voting stock to be acquired pursuant to the plan. Delivery shall be made either in person or by depositing a copy of the plan or an approved summary thereof in the United States mails, postage prepaid, addressed to the shareholder at his address of record as furnished by the subsidiary insurer or its transfer agent. The parent corporation shall thereafter file with the commissioner an affidavit of its secretary or assistant secretary setting forth that the delivery was made and the date of delivery.

(d) Notwithstanding approval by the commissioner of the plan of acquisition or delivery of the plan or of an approved summary thereof to shareholders, the plan of acquisition may be abandoned at any time prior to the proposed effective date of acquisition pursuant to a provision for abandonment, if any, contained in the plan.

(e) Upon compliance with the requirements of this section and if the plan of acquisition has not been abandoned, ownership of the voting stock to be acquired pursuant to the plan shall automatically vest in the parent

corporation on the date of acquisition proposed in the plan, without any physical transfer or deposit of certificates representing that voting stock, and the parent corporation shall be entitled to have new certificates therefor registered in its name. Shareholders whose voting stock is so acquired shall cease to be shareholders and shall have only the right to receive the consideration to be paid in exchange for their voting stock pursuant to the plan of acquisition. [IC 1973, 27-3-3-2, as added by Acts 1973, P.L. 278, § 1; P.L. 7-1987, § 144.]

Compiler's Notes. The subdivision (a) because of the existence of subdivisions (b) designation, deleted by the 1987 amendment, through (e).
was restored in brackets by the compiler

27-3-3-3. Dissent by subsidiary shareholder. — Within thirty (30) days after delivery of the plan of acquisition or an approved summary thereof to shareholders as hereinabove provided, any shareholder of the subsidiary insurer may notify the subsidiary insurer in writing of his dissent from the plan and of his demand for payment of fair value of his voting stock, and, if the acquisition proposed in the plan is effected, the subsidiary insurer shall pay to each dissenting shareholder, upon surrender of the certificate or certificates representing the affected voting stock, the fair value thereof as of the day prior to the date on which the plan of acquisition was adopted by the board of directors of the parent corporation, excluding any appreciation or depreciation in anticipation of, or resulting from, that corporate action. Dissent and demand under this section shall be accompanied by the certificate or certificates representing the dissenting shareholder's voting stock for notation thereon that dissent and demand have been made, unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. Dissent and demand shall only be made jointly by holders of voting stock jointly held. Any shareholder failing to make the dissent and demand accompanied by certificates representing his voting stock within the thirty (30) day period shall be bound by the terms and conditions of the plan of acquisition. Any shareholder making dissent and demand accompanied by certificates representing his voting stock shall thereafter have no rights with respect to that voting stock except the right to receive payment therefor under this section, and a transferee of voting stock shall acquire by the transfer no rights other than those which the original dissenting shareholder had after making dissent and demand.

No dissent and demand may be withdrawn unless the president or a vice-president of the subsidiary insurer shall consent thereto in writing. If, however, dissent and demand is withdrawn upon such consent, or if the plan of acquisition is abandoned, or if a dissenting shareholder fails to submit for notation or surrender for payment the certificate or certificates representing his voting stock at the time and in the manner required by this section, or if a dissenting shareholder does not file a petition for a determination of fair value of his voting stock within the time and in the manner provided in this section and the subsidiary insurer does not file a petition for such determination, or if a court of competent jurisdiction determines that a dissenting shareholder is not entitled to the relief provided by this section, then the

right of the dissenting shareholder to be paid the fair value of his voting stock shall cease and his status and rights shall be the same as a shareholder failing to make dissent and demand, without prejudice to any corporate proceedings which may have been taken during the interim.

Within sixty (60) days after the acquisition proposed in the plan is effected, the subsidiary insurer shall give written notice thereof to each shareholder who has made dissent and demand as in this section provided, and shall make a written offer to each such dissenting shareholder to pay for his voting stock a specified price deemed by the subsidiary insurer to be the fair value thereof. This notice and offer shall be made when deposited in the United States mails, postage prepaid, addressed to the dissenting shareholder at his address of record. If the offer is accepted in writing by the dissenting shareholder, the subsidiary insurer shall pay the specified price to the dissenting shareholder upon surrender of the certificate or certificates representing his voting stock. Upon such payment the dissenting shareholder shall cease to have any interest in such voting stock and such voting stock shall be retired by the subsidiary insurer pursuant to IC 1971, 27-1-8-12.

If within thirty (30) days after the date of the mailing of the written offer the subsidiary insurer and a dissenting shareholder do not agree in writing upon the fair value, the subsidiary insurer or the dissenting shareholder may, within ninety (90) days after the date of the mailing of the written offer, petition the circuit or superior court of the county in which the principal office of the subsidiary insurer is located to appraise the fair value of the voting stock as of the day prior to the date on which the plan of acquisition was adopted by the board of directors of the parent corporation, excluding any appreciation or depreciation in anticipation of, or resulting from, that corporate action. If more than one (1) petition is filed, the petitions may be consolidated or joint hearings may be held thereon. The practice, procedure and judgment in the circuit or superior court shall be the same, so far as practical, as that under the eminent domain laws in this state. The judgment of the circuit or superior court shall be final. A judgment shall be payable only upon and concurrently with the surrender by such dissenting shareholder to the subsidiary insurer of the certificate or certificates representing the voting stock. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in the voting stock and such voting stock shall be retired by the subsidiary insurer pursuant to IC 1971, 27-1-8-12.

This section shall provide the exclusive method for dissenting from a plan of acquisition effected pursuant to this chapter and demanding payment of fair value of the voting stock acquired or to be acquired under such a plan. [IC 1973, 27-3-3-3, as added by Acts 1973, P.L. 278, § 1.]

27-3-3-4. Parent and subsidiary insurer — Separate and distinct corporations. — Notwithstanding a plan of acquisition effected pursuant to this chapter, the parent corporation and its subsidiary insurer shall in all respects stand before the law as separate and distinct corporations, with neither of the corporations having any liability to the creditors, policyhold-

ers, if any, or shareholders of the other, notwithstanding any actions or omissions of the officers, directors, or shareholders of either or both of the corporations. [IC 1973, 27-3-3-4, as added by Acts 1973, P.L. 278, § 1.]

27-3-3-5. Method of acquisition under chapter additional. — The method authorized by this chapter for acquiring voting stock of a subsidiary insurer is not exclusive, but is in addition to any other lawful method for the acquisition of such voting stock. [IC 1973, 27-3-3-5, as added by Acts 1973, P.L. 278, § 1.]

ARTICLE 4

UNFAIR COMPETITION, UNAUTHORIZED, AND FOREIGN INSURERS

CHAPTER.

1. UNFAIR COMPETITION, 27-4-1-1 — 27-4-1-19.
- 1.5. AUTO REPAIR CLAIMS SETTLEMENT, 27-4-1.5-1 — 27-4-1.5-13.
2. [REPEALED.]
3. AGENT REPRESENTATION — UNLAWFUL RESTRICTIONS, 27-4-3-1 — 27-4-3-3.
4. UNAUTHORIZED INSURERS PROCESS ACT, 27-4-4-1 — 27-4-4-8.

CHAPTER.

5. UNAUTHORIZED INSURERS ACT, 27-4-5-1 — 27-4-5-8.
6. UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT, 27-4-6-1 — 27-4-6-6.
7. [REPEALED.]
8. FOREIGN PLATE GLASS INSURERS, 27-4-8-1.

CHAPTER 1

UNFAIR COMPETITION

SECTION.

- 27-4-1-1. Purpose of chapter.
- 27-4-1-2. Definitions — "Person" — "Department" — "Commissioner".
- 27-4-1-3. Unfair competition and trade practices prohibited.
- 27-4-1-4. Unfair methods of competition and unfair and deceptive acts and practices in business — Defined.
- 27-4-1-4.5. Unfair claims settlement practices.
- 27-4-1-5. Commissioner's statement of charges of unfair practice — Notice — Rights of parties.
- 27-4-1-5.5. [Repealed.]
- 27-4-1-5.6. Unfair claim settlement practices — Complaints by policyholders.
- 27-4-1-6. Commissioner's order to cease and desist — Fine — Suspension or revocation of license.
- 27-4-1-7. Judicial review of commissioner's order — Petition for civil enforcement.
- 27-4-1-8. Undefined act constituting unfair competition or practices —

SECTION.

- Statement of charges — Notice and hearing.
- 27-4-1-9. Judicial review.
- 27-4-1-10. Liability under other laws of state.
- 27-4-1-11. Foreign or alien insurer engaging in unfair practices — Duty and authority of commissioner — Domiciliary state defined.
- 27-4-1-12. Violation of orders — Penalties.
- 27-4-1-13. Powers of commissioner and the department additional to other powers.
- 27-4-1-14. [Repealed.]
- 27-4-1-15. Appointment of employees — Chosen for fitness — Salaries — Removal — Deputy commissioner — Liability in individual capacity.
- 27-4-1-16. Provisions of IC 4-22-2 not applicable to chapter.
- 27-4-1-17. Chapter is additional to other laws.
- 27-4-1-18. Action to enforce order — Appeal of order.
- 27-4-1-19. Annual report of valid consumer complaints.

27-4-1-1. Purpose of chapter. — The purpose of this chapter is to regulate the trade practices in the business of insurance, in accordance with the intent of Congress as expressed in 15 U.S.C. 1011 et seq., by defining, or providing for the determination of, all such practices which constitute in this state unfair methods of competition and unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. [Acts 1947, ch. 112, § 1; P.L.252-1985, § 144.]

Cross References. Applicability to fraternal benefit societies, IC 27-11-8-10.

Unauthorized Insurers' False Advertising Process Act, IC 27-4-6.

Indiana Law Review. Survey of Recent Developments in Insurance Law, 27 Ind. L. Rev. 1171 (1994).

Collateral References. Insurer's duty, and effect of its failure, to provide insured or payee with copy of policy or other adequate documentation of its terms. 78 A.L.R.4th 9.

27-4-1-2. Definitions — "Person" — "Department" — "Commissioner". — When and as used in this chapter:

(a) The term "person" shall mean any individual, corporation, company including any farmers' mutual insurance company, association, partnership, firm, reciprocal exchange, inter-insurer, Lloyds insurers, society, fraternal benefit society, lodge, order, council, corps, and any other association or legal entity, engaged in the business of insurance, including but not in limitation of the foregoing, agents, brokers, solicitors, advisors, auditors, and adjusters.

(b) "Department" shall mean the department of insurance of this state created and defined as a department in the state government of the state of Indiana by IC 27-1.

(c) "Commissioner" shall mean the insurance commissioner of this state appointed pursuant to, and on and in whom the powers, duties, management, and control of the department are conferred and vested by, the provisions of IC 27-1. [Acts 1947, ch. 112, § 2; P.L.252-1985, § 145.]

27-4-1-3. Unfair competition and trade practices prohibited. — No person shall engage in this state in any trade practice which is defined in this chapter or determined pursuant to this chapter as an unfair method of competition or as an unfair or deceptive act or practice in the business of insurance as defined in IC 27-1-2-3. [Acts 1947, ch. 112, § 3; P.L.252-1985, § 146.]

27-4-1-4. Unfair methods of competition and unfair and deceptive acts and practices in business — Defined. — The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

- (B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;
 - (C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;
 - (D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or
 - (E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance.
- (2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading.
- (3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.
- (4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.
- (5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.
- (6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

- (i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;
- (ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or
- (iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums

payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

(D) Paying by an insurer or agent thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a

member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 [IC 27-4-1-8] of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 [IC 27-4-1-4.5] of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-1-15.5-3(h).

(23) Violating IC 27-8-26 concerning genetic screening or testing.

[Acts 1947, ch. 112, § 4; 1955, ch. 10, § 1; 1971, P.L. 389, § 1; 1974, P.L. 124, § 1; 1981, P.L. 247, § 1; P.L.259-1983, § 1; P.L.271-1987, § 5; P.L.5-1988, § 144; P.L.160-1988, § 1; P.L.2-1992, § 783; P.L.122-1992, § 2; P.L.8-1993, §§ 417, 418; P.L.223-1993, § 6; P.L.225-1993, § 1; P.L.1-1994, § 134; P.L.116-1994, § 49; P.L.133-1994, § 1; P.L.2-1995, § 104; P.L.185-1996, § 10; P.L.188-1996, § 1; P.L.150-1997, § 2.]

Effective Dates. P.L.150-1997, § 2. January 1, 1998.

Indiana Law Review. Third Party Insurer Liability in Title VII Discrimination

Actions: A Resolution Against Liability, 18 Ind. L. Rev. 521 (1985).

Cited: Gibraltar Mut. Ins. Co. v. Hoosier Ins. Co., 489 N.E.2d 592 (Ind. App. 1986).

NOTES TO DECISIONS

ANALYSIS

In general.

Effect on truth as defense to defamation.

Federal law.

In General.

The exclusion of podiatrists' services from compensation scheduled services of a mutual medical insurance policy is not an unfair discrimination under subsection (7)(b) of this section as appellee's contractual provisions are equally applicable to all insureds, and such universal application is not discrimination. Insurance Comm'rs v. Mutual Medical Ins., Inc., 251 Ind. 296, 15 Ind. Dec. 551, 241 N.E.2d 56 (1968).

Effect on Truth as Defense to Defamation.

Indiana's unfair competition act regulating insurance, IC 27-4-1-1 et seq., has not effectively eliminated the affirmative defense of truth to an action for defamation. Gibraltar Mut. Ins. Co. v. Hoosier Ins. Co., 486 N.E.2d 548 (Ind. App. 1985), modified on reh'g to clarify a statement concerning guaranty associations, 489 N.E.2d 592 (Ind. App. 1986).

Federal Law.

Indiana insurance law, prohibiting unfair discrimination, neither requires nor condones redlining, nor does it commit to insurers all decisions about redlining, and thus Indiana law does not preempt the Fair Housing Act,

Federal Law. (Cont'd)

42 U.S.C. § 3604 et seq. United Farm Bureau

Mut. Ins. Co. v. Metropolitan Human Relations Comm'n, 24 F.3d 1008 (7th Cir. 1994).

Collateral References. Agents or brokers, public regulation or control. 10 A.L.R.2d 950.

Liability of insurance agent, for exposure of insurer to liability, because of failure to fully disclose or assess risk or to report issuance of policy. 35 A.L.R.3d 821.

Recovery of cumulative statutory penalties for violations of regulations as to insurance. 71 A.L.R.2d 986.

Right of corporation to indemnity for civil or criminal liability incurred by employee's violation of antitrust laws. 37 A.L.R.3d 1355.

Rights and remedies with respect to another's use of a deceptively similar advertising slogan. 2 A.L.R.3d 748.

State regulation of insurer's right to classify insureds for premium or other underwriting purposes by occupation. 57 A.L.R.4th 625.

27-4-1-4.5. Unfair claims settlement practices. — The following are unfair claim settlement practices:

- (1) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.
- (2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.
- (3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
- (4) Refusing to pay claims without conducting a reasonable investigation based upon all available information.
- (5) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.
- (6) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.
- (7) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.
- (8) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application.
- (9) Attempting to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured.
- (10) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made.
- (11) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
- (12) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

(13) Failing to promptly settle claims, where liability has become reasonably clear, under one (1) portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(14) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(15) In negotiations concerning liability insurance claims, ascribing a percentage of fault to a person seeking to recover from an insured party, in spite of an obvious absence of fault on the part of that person.

(16) The unfair claims settlement practices defined in IC 27-4-1.5. [IC 27-4-1-4.5, as added by P.L.259-1983, § 2; P.L.271-1987, § 6; P.L.194-1991, § 1.]

Res Gestae. Bad Faith in Uninsured Motorist Claims in Indiana, 32 Res Gestae 372 (1989).

Cited: Guarantee Trust Life Ins. Co. v. Palsce, 641 N.E.2d 1266 (Ind. App. 1994).

NOTES TO DECISIONS

ANALYSIS

Chiropractors.

Failure to promptly settle.
Misrepresentations of policy.

Chiropractors.

The finding that insurance company paid chiropractic claims in homeowner and automobile policies at a significantly lower rate than it paid similar non-chiropractic claims, in violation of this section, was substantially supported by the evidence in the record. *State Farm Mut. Auto. Ins. Co. v. Mortell*, 667 N.E.2d 192 (Ind. App. 1996).

Failure to Promptly Settle.

Trial court did not err in granting defendant summary judgment on plaintiffs' claim

for punitive damages for defendant's alleged bad faith in refusing to tender amount plaintiffs claimed was not in dispute under underinsured coverage of business automobile policy, where good faith disputes existed regarding worker's compensation reduction and anti-stacking provisions. *Ansert ex rel. Ansert v. Adams*, 678 N.E.2d 839 (Ind. App. 1997).

Misrepresentations of Policy.

The question of whether an attorney had the right to rely upon insurance company's claims manager's misrepresentations of policy limits was a question of fact for the jury to decide. *Fire Ins. Exch. v. Bell*, 634 N.E.2d 517 (Ind. App. 1994), *aff'd* in part and vacated in part on other grounds, 643 N.E.2d 310 (Ind. 1994).

Collateral References. Liability of independent or public insurance adjuster to insured for conduct in adjusting claim. 50 A.L.R.4th 900.

Duty of insurer to pay for independent counsel when conflict of interest exists between insured and insurer. 50 A.L.R.4th 932.

Emotional or mental distress as element of damages for liability insurer's wrongful refusal to settle. 57 A.L.R.4th 801.

Liability insurance: Third party's right of action for insurer's bad-faith tactics designed to delay payment of claim. 62 A.L.R.4th 1113.

Policy provision limiting time within which action may be brought on the policy as applicable to tort action by insured against insurer. 66 A.L.R.4th 859.

Liability insurer's postloss conduct as waiver of, or estoppel to assert, "no-action" clause. 68 A.L.R.4th 389.

Preemption by Longshore and Harbor Workers' Compensation Act (33 USCS §§ 901 et seq.) of state law claims for bad-faith dealing by insurer or agent of insurer. 90 A.L.R. Fed. 723.

27-4-1-5. Commissioner's statement of charges of unfair practice — Notice — Rights of parties. — (a) Whenever the commissioner shall

have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice defined in section 4 [IC 27-4-1-4] of this chapter and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and cause to be served upon such person a statement of the charges in that respect and a notice in writing of a hearing thereon to be held under IC 4-21.5-3.

(b) Whenever the hearing involves the claim, averment, or complaint of, or made by, a person who is not an investigator, deputy, examiner, or other employee of the department, a copy of the substance of such claim, averment, or complaint shall be included in or exhibited with such notice. The commissioner and department shall afford all interested persons or parties the right and opportunity for the settlement or adjustment of all claims, controversies, and issues when such persons or parties shall join in a request in writing for such opportunity. [Acts 1947, ch. 112, § 5; P.L.252-1985, § 147; P.L.7-1987, § 145.]

27-4-1-5.5. [Repealed.]

Compiler's Notes. This section, concerning complaints by policyholders of unfair claim settlement practices, was repealed by

P.L.1-1991, § 165, effective April 23, 1991. For present similar provisions, see IC 27-4-1-5.6.

27-4-1-5.6. Unfair claim settlement practices — Complaints by policyholders. — (a) A person who believes the person has been adversely affected by an unfair claim settlement practice under section 4.5 [IC 27-4-1-4.5] of this chapter may file a complaint with the commissioner. If the commissioner believes an unfair claim settlement practice has occurred, the commissioner shall, within ten (10) business days from the date of receipt of a written complaint, deliver a copy of the complaint to the insurer and shall respond in writing to the complaining party, at the address provided in the complaint, advising the party of the following:

- (1) The specific action taken by the department on the complaint.
- (2) Any further investigations or other actions that are intended by the department.

(b) An insurer who receives a written notice of complaint under subsection (a) shall promptly conduct an investigation of the matters alleged in the complaint. Within twenty (20) business days from the date of receipt of the complaint, the insurer shall provide to the commissioner and the complaining party a written report containing the following information:

- (1) The specific reasons for actions taken by the insurer with respect to the claim.
- (2) The specific reasons for any inaction by the insurer with respect to the claim.
- (3) If the claim has not been settled, a good faith estimate of the time required for settlement.

(c) An insurer who commits an unfair claims settlement practice or who fails to comply with this section is subject to action by the commissioner under section 6 [IC 27-4-1-6] of this chapter.

(d) Each insurer shall provide to each current policyholder a one (1) time written notice of the remedies provided under this section. Future policyholders shall be notified by the insurer at the time the insurance policy is issued. [P.L.1-1991, § 166.]

27-4-1-6. Commissioner's order to cease and desist — Fine — Suspension or revocation of license. — (a) If after a hearing under IC 4-21.5-3, the commissioner determines that the method of competition or the act or practice in question is defined in section 4 [IC 27-4-1-4] of this chapter and that the person complained of has engaged in such method of competition, act, or practice in violation of this chapter, he shall reduce his findings to writing and shall issue and cause to be served on the person charged with the violation an order requiring such person to cease and desist from such method of competition, act, or practice, and the commissioner may at his discretion order one (1) or more of the following:

(1) Payment of a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each act or violation but not to exceed an aggregate penalty of one hundred thousand dollars (\$100,000) in any twelve (12) month period unless the person knew or reasonably should have known that he was in violation of this chapter, in which case the penalty may be not more than fifty thousand dollars (\$50,000) for each act or violation but not to exceed an aggregate penalty of two hundred thousand dollars (\$200,000) in any twelve (12) month period.

(2) Suspension or revocation of the person's license, or certificate of authority, if he knew or reasonably should have known he was in violation of this chapter.

(b) All civil penalties imposed and collected under this section shall be deposited in the state general fund. [Acts 1947, ch. 112, § 6; P.L.259-1983, § 3; P.L.7-1987, § 146; P.L.121-1990, § 14; P.L.149-1990, § 2.]

Indiana Law Review. A Study of Medical Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

27-4-1-7. Judicial review of commissioner's order — Petition for civil enforcement. — (a) Any person required by an order of the commissioner under section 6 [IC 27-4-1-6] of this chapter to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 4 [IC 27-4-1-4] of this chapter may obtain judicial review of such order under IC 4-21.5-5.

(b) The commissioner may file a petition for civil enforcement of an order under IC 4-21.5-6. [Acts 1947, ch. 112, § 7; P.L.252-1985, § 148; P.L.7-1987, § 147.]

Cross References. Consideration of appeals, Rule AP. 4.

Cited: *Roudebush v. Hartke*, 405 U.S. 15, 92 S. Ct. 804, 31 L. Ed. 2d 1 (1972).

27-4-1-8. Undefined act constituting unfair competition or practices — Statement of charges — Notice and hearing. — Whenever the commissioner shall have reason to believe that any person engaged in the

business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 4 [IC 27-4-1-4] of this chapter, that such method of competition is unfair, or that such act or practice is unfair or deceptive, and that a proceeding by him in respect thereto would be to the interest of the public, he may issue and cause to be served upon such person a statement of the charges in that respect and a notice of a hearing thereon. Each such hearing shall be conducted under IC 4-21.5-3 in the same manner as the hearings provided for in section 5 [IC 27-4-1-5] of this chapter. [Acts 1947, ch. 112, § 8; P.L.252-1985, § 149; P.L.7-1987, § 148.]

Cross References. Consideration of appeals, Rule AP. 4.

Collateral References. State regulation of insurer's right to classify insureds for pre-

mium or other underwriting purposes by occupation. 57 A.L.R.4th 625.

27-4-1-9. Judicial review. — Any party to a proceeding under this chapter, including any intervenor, may obtain judicial review under IC 4-21.5-5. [Acts 1947, ch. 112, § 9; P.L.252-1985, § 150; P.L.7-1987, § 149.]

Cross References. Consideration of appeals, Rule AP. 4.

27-4-1-10. Liability under other laws of state. — No order of the commissioner under this chapter or judgment of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other statute of this state. [Acts 1947, ch. 112, § 10; P.L.252-1985, § 151.]

27-4-1-11. Foreign or alien insurer engaging in unfair practices — Duty and authority of commissioner — Domiciliary state defined. — If any foreign or alien insurer engages in this state in an unfair method of competition or in an unfair or deceptive practice as defined in section 4(1) or 4(2) [IC 27-4-1-4(1) or (2)] of this chapter by means of any advertisement, announcement, or statement, in any magazine or other periodical publication having a general circulation in more than five (5) states, or by means of any radio broadcast to more than five (5) states, including the state of domicile of such insurer, and if the laws of the state where such insurer is domiciled make provision for enjoining of such method of competition or practice, it shall be the duty of the commissioner to advise the insurance supervisory official of such domiciliary state of the violation in order that he may take appropriate action, but the commissioner shall have no authority to proceed, with respect to such violation, under either section 5 or 8 [IC 27-4-1-5 or IC 27-4-1-8] of this chapter. For the purpose of this section the domiciliary state of an alien insurer shall be deemed to be its state of entry, or the state of the principal office in the United States. [Acts 1947, ch. 112, § 11; P.L.252-1985, § 152.]

27-4-1-12. Violation of orders — Penalties. — Any person who violates a cease and desist order of the commissioner under section 6 [IC

27-4-1-6] of this chapter, or an order of the court under IC 4-21.5, after it has become final, and while such order is in effect, may, after notice and hearing under IC 4-21.5 and upon order of the commissioner, be subject at the discretion of the commissioner to one (1) or more of the following:

- (1) A civil penalty of not more than twenty-five thousand dollars (\$25,000) for each act or violation.
- (2) Suspension or revocation of the person's license or certificate of authority. [Acts 1947, ch. 112, § 12; P.L.259-1983, § 4; P.L.7-1987, § 150; P.L.121-1990, § 5; P.L.149-1990, § 3.]

Indiana Law Review. A Study of Medical Malpractice Insurance: Maintaining Rates and Availability, 9 Ind. L. Rev. 594.

27-4-1-13. Powers of commissioner and the department additional to other powers. — The powers vested in the commissioner and the department by this chapter shall be additional to any other powers to enforce any penalties or forfeitures authorized by law with respect to the methods, acts, and practices declared hereby to be unfair or deceptive. [Acts 1947, ch. 112, § 13; P.L.252-1985, § 153.]

27-4-1-14. [Repealed.]

Compiler's Notes. This section, concerning applicability of the former Administrative Adjudication Act, was repealed by P.L.7-1987, § 151, effective July 1, 1987.

27-4-1-15. Appointment of employees — Chosen for fitness — Salaries — Removal — Deputy commissioner — Liability in individual capacity. — (a) For the purpose of maintaining the affirmative, active, and definite administration of the provisions of this chapter, the commissioner, with the approval of the governor, may appoint such additional actuaries, agents, deputies, examiners, assistants, stenographers, reporters, and other employees in the department as may be found necessary to carry out the provisions of this chapter. Except as otherwise provided in this chapter, such additional deputies, examiners, assistants, reporters, and employees so appointed shall be chosen for their fitness, either professional or practical, as the nature of the position may require, irrespective of their political beliefs or affiliations. The technical or professional qualifications of any applicant shall be determined by examination, professional rating, or otherwise, as the commissioner with the approval of the governor may determine. Subject to the approval of the governor and the state budget director, the salaries of such additional actuaries, agents, deputies, examiners, assistants, stenographers, reporters, and other employees shall be fixed by the commissioner. Any actuary agent, deputy, examiner, assistant, stenographer, or employee so employed may be removed at any time by the commissioner.

(b) In the absence of the commissioner, he may, by written order, designate a deputy to conduct any hearing, and, in such case, such deputy commissioner shall possess and may exercise all powers of the commissioner with respect to the matter in hearing.

(c) Neither the commissioner nor any actuary, deputy, examiner, assistant, or employee in the department shall be liable in their individual capacity, except to the state of Indiana, for any act done or omitted in connection with the performance of their respective duties under the provisions of this chapter. [Acts 1947, ch. 112, § 15; P.L.252-1985, § 155.]

27-4-1-16. Provisions of IC 4-22-2 not applicable to chapter. — No provision of IC 4-22-2 shall be construed to apply to any hearings held or proceedings had pursuant to the provisions of this chapter. [Acts 1947, ch. 112, § 16; P.L.252-1985, § 156.]

27-4-1-17. Chapter is additional to other laws. — (a) This chapter shall be, and shall be construed as being, in addition to IC 27-1, and in addition to IC 27-7-2, and in addition to any and all statutes supplemental to either, and in addition to any and all other laws of the state of Indiana concerning insurance or the business of insurance, whether enacted at any time in the 1947 regular session or at any preceding session of the general assembly of the state of Indiana.

(b) Whereas certain unlawful practices are set forth in other insurance statutes of the state of Indiana which unlawful practices are similar or identical to those enumerated in section 4 [IC 27-4-1-4] of this chapter and are characterized in other insurance statutes as criminal in nature, it is deemed desirable to retain the criminal penalties imposed by other insurance statutes; for that purpose, nothing contained in this chapter shall be construed to repeal, amend, or otherwise to affect in any way IC 27-1, IC 27-7-2, or any other law of the state of Indiana concerning insurance or the business of insurance whether enacted at any time in the 1947 regular session or at any preceding session of the general assembly of the state of Indiana, it being the intent of this chapter to provide additional administrative remedies for the purpose of controlling unfair methods of competition and unfair and deceptive acts and practices in and affecting the business of insurance.

(c) Nothing in this chapter shall be construed as exempting or excepting from the provisions of this chapter any person engaged in the business of insurance in this state, except as in this chapter otherwise expressly provided. [Acts 1947, ch. 112, § 18; P.L.252-1985, § 157.]

27-4-1-18. Action to enforce order — Appeal of order. — This article does not create a cause of action other than an action by:

- (1) The commissioner to enforce his order; or
- (2) A person, as defined in section 1 [IC 27-4-1-1] of this chapter, to appeal an order of the commissioner. [IC 27-4-1-18, as added by P.L.259-1983, § 6.]

NOTES TO DECISIONS

Applicability.

There is no private right of action under this article. Only the commissioner, or a per-

son appealing from an order of the commissioner, may bring an action under the unfair discrimination provisions. *Dryden v. Sun Life*

Applicability. (Cont'd)

Assurance Co., 737 F. Supp. 1058 (S.D. Ind. 1989), aff'd, 909 F.2d 1486 (7th Cir. 1990).

This chapter creates a cause of action only for the commissioner of insurance or for entities in the business of insurance who wish to

appeal an order of the commissioner, not for private individuals such as an employee who alleges that his worker's compensation insurer has improperly refused benefits. *Dietrich v. Liberty Mut. Ins. Co.*, 759 F. Supp. 467 (N.D. Ind. 1991).

27-4-1-19. Annual report of valid consumer complaints. — The commissioner shall, on an annual basis and in a manner determined by the commissioner, publish figures indicating the ratio of valid consumer complaints lodged against each company weighted by the direct premiums earned in Indiana by each company. [P.L.121-1990, § 6; P.L.149-1990, § 4.]

CHAPTER 1.5

AUTO REPAIR CLAIMS SETTLEMENT

SECTION.

- 27-4-1.5-1. "Body part" defined.
- 27-4-1.5-2. "Body shop" defined.
- 27-4-1.5-3. "Insured" defined.
- 27-4-1.5-4. "Insurer" defined.
- 27-4-1.5-5. "Motor vehicle" defined.
- 27-4-1.5-6. "New body part" defined.
- 27-4-1.5-7. "Used body part" defined.
- 27-4-1.5-8. Written notice by insurer prior to directing repair — Requirements.
- 27-4-1.5-9. Effect of directing repair without giving notice.
- 27-4-1.5-10. Effect of directing repair without

SECTION.

- giving insured opportunity to select type of body part.
- 27-4-1.5-11. Effect of failure to obey insured's approval of type of body part used in repair.
- 27-4-1.5-12. Effect of failure to pay for or direct a body shop to use type of body part approved by insured.
- 27-4-1.5-13. Act of agent or body shop at direction of insurer deemed act of insurer.

27-4-1.5-1. "Body part" defined. — (a) As used in this chapter, "body part" means a replacement for any of the nonmechanical sheet metal or plastic parts that generally constitute the exterior of a motor vehicle.

(b) The term includes the inner and outer panels of the body of a motor vehicle. [P.L.194-1991, § 2.]

Compiler's Notes. P.L.194-1991, § 3, effective January 1, 1991, provides: "IC 27-4-1.5, as added by this act, applies to the repair

of motor vehicles under insurance policies issued or renewed after June 30, 1991."

27-4-1.5-2. "Body shop" defined. — As used in this chapter, "body shop" means a business that repairs damage to the exterior of motor vehicles. [P.L.194-1991, § 2.]

27-4-1.5-3. "Insured" defined. — As used in this chapter, "insured" means a person who is entitled to the coverage provided by an insurance policy. [P.L.194-1991, § 2.]

27-4-1.5-4. "Insurer" defined. — As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3. [P.L.194-1991, § 2.]

27-4-1.5-5. “Motor vehicle” defined. — As used in this chapter, “motor vehicle” has the meaning set forth in IC 9-13-2-105. [P.L.194-1991, § 2; P.L.1-1992, § 150.]

27-4-1.5-6. “New body part” defined. — As used in this chapter, “new body part” means a body part that has not previously been attached to a motor vehicle. [P.L.194-1991, § 2.]

27-4-1.5-7. “Used body part” defined. — As used in this chapter, “used body part” means a body part that has previously been attached to a motor vehicle. [P.L.194-1991, § 2.]

27-4-1.5-8. Written notice by insurer prior to directing repair — Requirements. — (a) An insurer that is obligated to pay at least part of the cost of repairing the exterior of a motor vehicle under an insurance policy issued by the insurer may not direct a body shop to repair the motor vehicle until the insurer has presented the insured with a written notice that meets the requirements set forth in subsections (b) and (c).

(b) An insurer described in subsection (a) shall present the insured with a written notice that does the following:

(1) Informs the insured that the insured has a right to approve the type of body parts to be used in the repair of the motor vehicle.

(2) Gives the insured an opportunity, in approving the type of body parts to be used in the repair of the motor vehicle, to select from among the following:

(A) New body parts manufactured by or for the manufacturer of the motor vehicle.

(B) New body parts that were not manufactured by or for the manufacturer of the motor vehicle.

(C) Used body parts.

(c) An insurer described in subsection (a) shall give the insured an opportunity to indicate in writing the type of body part that the insured approves for use in the repair of the motor vehicle.

(d) This section applies only in the five (5) years after the model year of the motor vehicle. [P.L.194-1991, § 2.]

27-4-1.5-9. Effect of directing repair without giving notice. — An insurer that:

(1) Is required to give a written notice to an insured under section 8 [IC 27-4-1.5-8] of this chapter concerning the repair of a motor vehicle;

(2) Does not give the insured a written notice that meets the requirements set forth in section 8(b) [IC 27-4-1.5-8(b)] of this chapter; and

(3) Directs a body shop to repair the motor vehicle;

commits an unfair claim settlement practice under IC 27-4-1-4.5. [P.L.194-1991, § 2.]

27-4-1.5-10. Effect of directing repair without giving insured opportunity to select type of body part. — An insurer that:

- (1) Is subject to the requirement set forth in section 8(c) [IC 27-4-1.5-8(c)] of this chapter with respect to the repair of a motor vehicle;
 - (2) Does not satisfy this requirement; and
 - (3) Directs a body shop to repair the motor vehicle;
- commits an unfair claims settlement practice under IC 27-4-1-4.5. [P.L.194-1991, § 2.]

27-4-1.5-11. Effect of failure to obey insured's approval of type of body part used in repair. — An insurer that:

- (1) Under section 8(c) [IC 27-4-1.5-8(c)] of this chapter gives an insured an opportunity to indicate in writing the type of body part that the insured approves for use in the repair of the motor vehicle; and
 - (2) Directs a body shop to repair the motor vehicle using a type of body part different from the type of body part that the insured approved for use in the repair of the motor vehicle;
- commits an unfair claim settlement practice under IC 27-4-1-4.5. [P.L.194-1991, § 2.]

27-4-1.5-12. Effect of failure to pay for or direct a body shop to use type of body part approved by insured. — An insurer that:

- (1) Under section 8(c) [IC 27-4-1.5-8(c)] of this chapter gives an insured an opportunity to indicate in writing the type of body parts that the insured approves for use in the repair of a motor vehicle; and
 - (2) Refuses to:
 - (A) Pay for; or
 - (B) Direct a body shop to use;the type of body parts approved by the insured under section 8(c) of this chapter in the repair of the motor vehicle;
- commits an unfair claims settlement practice under IC 27-4-1-4.5. [P.L.194-1991, § 2.]

27-4-1.5-13. Act of agent or body shop at direction of insurer deemed act of insurer. — An act that an insurer is required to perform under this chapter shall be considered to have been performed by the insurer if the act is performed by:

- (1) An agent of the insurer; or
 - (2) A body shop that the insurer directs to repair a motor vehicle.
- [P.L.194-1991, § 2.]

CHAPTER 2

MISLEADING STATEMENTS CONCERNING GOVERNMENT INSURANCE

27-4-2-1, 27-4-2-2. [Repealed.]

Compiler's Notes. This chapter, concerning misleading statements concerning government life insurance for soldiers or veter-

ans, was repealed by § 2728 of Acts 1978, P.L. 2. For present provisions concerning impairment of rights of another, see IC 35-43-1-2.

CHAPTER 3

AGENT REPRESENTATION — UNLAWFUL RESTRICTIONS

SECTION.

27-4-3-1. Contracts — Limited representation — When unlawful.

27-4-3-2. Contracts — Restricted representation — When unlawful.

SECTION.

27-4-3-3. Penalty for violation — Procedure.

27-4-3-1. Contracts — Limited representation — When unlawful.

— It is hereby declared unlawful for any two (2) or more insurance companies writing the same class, or classes, of risks and doing business in this state, directly or indirectly, to enter into any arrangement, contract, agreement, understanding, combination or association to require, coerce or induce any agent or representative of any two (2) or more of such insurance companies within the state of Indiana to refrain from representing other such insurance companies, or to afford any advantage to any such agent to refrain from representing other such insurance companies or to impose upon such agent any disadvantage by reason of his acting as representative of other such insurance companies. [Acts 1937, ch. 46, § 1, p. 281.]

Opinions of Attorney General. A provision in the articles of an association of insurance agents preventing members from repre-

senting companies not belonging to the association is not contrary to the insurance laws. 1939, p. 361.

27-4-3-2. Contracts — Restricted representation — When unlawful.

— It shall be unlawful for any insurance agent representing or acting for two (2) or more insurance companies writing the same class or classes, of risks to enter, either directly or indirectly, into any agreement, arrangement, contract or understanding with one (1) or more of such companies that he will refrain from representing any other like company or companies, and it shall be unlawful for any such insurance company, not having a contract requiring an agent to represent it alone, in any manner to require, coerce or induce any agent to refrain from representing any other like company or companies: Provided, however, That this shall not be construed to prevent any insurance company or agent from at any time entering into a bona fide contract whereby such agent agrees that he will thereafter represent a single company exclusively. [Acts 1937, ch. 46, § 2, p. 281.]

NOTES TO DECISIONS

Exclusive Agency Contract.

This section on its face permits exclusive agency contracts. The policy created by the

statute permits exclusive agencies rather than forbidding them. *Wilmington v. Harvest Ins. Cos.*, 521 N.E.2d 953 (Ind. App. 1988).

27-4-3-3. Penalty for violation — Procedure. — For violation of any provision of this chapter, the license of the offending company or agent to transact the business of insurance within the state of Indiana shall be suspended for a period of three (3) years. Whenever information of any such violation shall come to the knowledge of the commissioner of insurance, he shall issue an order fixing a day certain, not more than thirty (30) nor less

than twenty (20) days from the making thereof, upon which the offender shall appear and show cause why such penalty should not be enforced, such order specifying with reasonable certainty the violation charged, and if, after hearing, the commissioner shall determine that the company or agent is guilty of such violation, he shall forthwith suspend the license of the offender for a period of three (3) years. Such hearing shall be public, and at any such hearing any person or corporation having lodged information of such violation with the commissioner shall be entitled to be present and submit evidence. Within thirty (30) days after the suspension of any such license, the agent or company whose license has been suspended may appeal from the ruling of the commissioner of insurance to the circuit or superior court of the county in which such agent resides or in which such company has its principal place of business, and if such company be a foreign insurance company then such appeal may be taken by such company to the circuit or superior court of Marion County. [Acts 1937, ch. 46, § 3, P.L.252-1985, § 158.]

CHAPTER 4

UNAUTHORIZED INSURERS PROCESS ACT

SECTION.

27-4-4-1. Purpose of chapter — Legislative intent.

27-4-4-2. Definitions.

27-4-4-3. Appointment of commissioner as attorney — Notice — Service — Judgment.

27-4-4-4. Unauthorized alien insurer — Requirements prior to pleading.

SECTION.

27-4-4-5. Failure to defend or make payment — Vexatious delay — Prima facie evidence — Attorney's fees.

27-4-4-6. Certain exceptions to the provisions of this chapter.

27-4-4-7. Chapter supplemental.

27-4-4-8. Title of chapter.

27-4-4-1. Purpose of chapter — Legislative intent. — (a) The purpose of this chapter is to subject certain insurers to the jurisdiction of courts of this state in suits by or on behalf of the insureds or beneficiaries under insurance contracts.

(b) The general assembly declares that it is a subject of concern that many residents of this state hold policies of insurance issued or delivered in this state by insurers while not authorized to do business in this state, thus presenting to such residents the often insuperable obstacle of resorting to distant forums for the purpose of asserting legal rights under such policies. In furtherance of such state interest, the general assembly provides in this chapter a method of substituted service of process upon such insurers and declares that in so doing it exercises its power to protect its residents and to define, for the purpose of this chapter, what constitutes doing business in this state, and also exercises powers and privileges available to the state by virtue of 15 U.S.C. 1011 et seq., which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. [Acts 1955, ch. 203, § 1; P.L.252-1985, § 159.]

Cross References. Unauthorized Insurers False Advertising Process Act, IC 27-4-6.

Cited: Brotherhood's Relief & Comp. Fund

v. Smith, 150 Ind. App. 452, 20 Ind. Dec. 457, 277 N.E.2d 180 (1971).

27-4-4-2. Definitions. — As used in this chapter and unless a different meaning appears from the context:

(a) The term “insurer” means a company, firm, partnership, association, order, society, or system making any kind or kinds of insurance and shall include associations operating as Lloyds, reciprocal, or interinsurers, or individual underwriters.

(b) The term “unauthorized foreign insurer” means an insurer organized under the laws of, or whose place of domicile is in any state of the United States other than this state or organized under the laws of, or whose place of domicile is in any territory or insular possession of the United States or the District of Columbia, and which insurer is not admitted, authorized, and licensed in accordance with the laws of this state to do and transact the business of insurance in the state of Indiana.

(c) The term “unauthorized alien insurer” means an insurer organized under the laws of, or whose place of domicile is in any country other than the United States or territory or insular possession thereof, or the District of Columbia, and which insurer is not admitted, authorized, and licensed in accordance with the laws of this state to do and transact the business of insurance in the state of Indiana. [Acts 1955, ch. 203, § 2; P.L.252-1985, § 160.]

Cross References. Unfair competition and practices, foreign or alien insurers, IC 27-4-1-11.

27-4-4-3. Appointment of commissioner as attorney — Notice — Service — Judgment. — (a) Any of the following acts in this state, effected by mail, or otherwise, by an unauthorized foreign or alien insurer; (1) the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business therein, (2) the solicitation of applications for such contracts, (3) the collection of premiums, membership fees, assessments or other considerations for such contracts, or (4) any other transaction of insurance business, is equivalent to and shall constitute an appointment by such insurer of the insurance commissioner of the state of Indiana and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance, and any such act shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such insurer.

(b) Such service of process shall be made by delivering to and leaving with the insurance commissioner of the state of Indiana, or in his office, two (2) copies thereof and the payment to him at the time of such service a fee as required under IC 27-1-3-15. The insurance commissioner shall forthwith mail by registered mail one (1) of the copies of such process to the defendant at its last known principal place of business, and shall keep a record of all process so served upon him. Such service of process is sufficient, provided notice of such service and a copy of the process are sent within ten (10) days

thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(c) Service of process in any such action, suit or proceeding shall in addition to the manner provided in subsection (b) of this section be valid if served upon any person within this state who, in this state on behalf of such insurer, is (1) soliciting insurance, or (2) making, issuing, or delivering any contract of insurance, or (3) collecting or receiving any premium, membership fee, assessment or other consideration for insurance; and a copy of such process is sent within ten (10) days thereafter by registered mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

(d) No plaintiff or complainant shall be entitled to a judgment by default under this section until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(e) Nothing in this section shall limit or abridge the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law. [Acts 1955, ch. 203, § 3; P.L.116-1994, § 50; P.L.130-1994, § 38.]

Cross References. Foreign and alien companies, false advertising, service of process, IC 27-4-6.

Indiana Legal Forum. A "Long-Arm" Statute for Indiana, 2 Ind. Legal F. 85.

Collateral References. Attorney representing foreign corporation in litigation as its agent for service of process in unconnected actions or proceedings. 9 A.L.R.3d 738.

Federal or state law as controlling, in diversity action, whether foreign corporation is amenable to service of process in state. 6 A.L.R.3d 1103.

Foreign insurance company as subject to

service of process in action on insurance contract made in another state or through mails. 44 A.L.R.2d 416.

Foreign insurance company as subject to service of process in action on policy. 44 A.L.R.2d 416.

Holding directors', officers', or stockholders' or sales meetings or conventions in a state by foreign corporation as doing business within the state. 84 A.L.R.2d 412.

Who is "general" or "managing" agent of foreign corporation under statute authorizing service of process on such agent. 17 A.L.R.3d 625.

27-4-4-4. Unauthorized alien insurer — Requirements prior to pleading. — (a) Before any unauthorized foreign or alien insurer shall file or cause to be filed any pleading in any action, suit, or proceeding instituted against it, such unauthorized insurer shall:

(1) Deposit, with the clerk of the court in which such action, suit, or proceeding is pending, cash or securities, or file with such clerk a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or

(2) Procure a certificate of authority to transact the business of insurance in this state.

(b) The court in any action, suit, or proceeding, in which service is made in the manner provided in section 3 [IC 27-4-4-3] of this chapter may, in its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) and to defend such action.

(c) Nothing in subsection (a) is to be construed to prevent an unauthorized foreign or alien insurer from filing a motion to quash a writ or to set aside service made in the manner provided in section 3 of this chapter on the ground either:

(1) That such unauthorized insurer has not done any of the acts enumerated in section 3(a) [IC 27-4-4-3(a)] of this chapter; or

(2) That the person on whom service was made pursuant to section 3(c) [IC 27-4-4-3(c)] of this chapter was not doing any of the acts therein enumerated. [Acts 1955, ch. 203, § 4; P.L.252-1985, § 161.]

27-4-4-5. Failure to defend or make payment — Vexatious delay — Prima facie evidence — Attorney's fees. — In any action against an unauthorized foreign or alien insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Such fee shall not exceed twelve and one-half per cent (12 ½%) of the amount which the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall such fee be less than twenty-five dollars (\$25.00). Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause. [Acts 1955, ch. 203, § 5.]

Cited: Brotherhood's Relief & Comp. Fund
v. Smith, 150 Ind. App. 452, 28 Ind. Dec. 457,
277 N.E.2d 180 (1971).

27-4-4-6. Certain exceptions to the provisions of this chapter. — The provisions of this chapter shall not apply to any action, suit, or proceeding against any unauthorized insurer arising out of any contract of:

- (1) Reinsurance effectuated in accordance with the laws of Indiana;
- (2) Aircraft insurance;

(3) Insurance on property or operations of railroads engaged in interstate commerce;

(4) Insurance against legal liability arising out of the ownership, operation or maintenance of any property having a permanent situs outside of this state; or

(5) Insurance against loss of or damage to any property having a permanent situs outside of this state;

where such contract contains a provision designating the department or the commissioner or a bona fide resident of the state of Indiana to be its true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract. [Acts 1955, ch. 203, § 6; P.L.252-1985, § 162.]

27-4-4-7. Chapter supplemental. — This chapter is declared to be in addition and supplemental to other laws of the state of Indiana and shall be construed accordingly. [Acts 1955, ch. 203, § 7; P.L.252-1985, § 163.]

27-4-4-8. Title of chapter. — This chapter may be cited as the Unauthorized Insurers Process Act. [Acts 1955, ch. 203, § 9; P.L.252-1985, § 164.]

CHAPTER 5

UNAUTHORIZED INSURERS ACT

SECTION.

27-4-5-1. Unauthorized Insurers Act — Purpose.

27-4-5-2. Transaction of business without certificate of authority prohibited — Penalty — Exceptions — Acts constituting the transaction of business — Validity of contracts — Liability of person aiding unauthorized insurer.

SECTION.

27-4-5-3. Injunction against unauthorized insurers.

27-4-5-4. Activities constitute consent to substituted service — Procedure.

27-4-5-5. Prerequisites to pleading by unauthorized insurer.

27-4-5-6. Foreign decrees — Enforcement.

27-4-5-7. [Repealed.]

27-4-5-8. Short title.

27-4-5-1. Unauthorized Insurers Act — Purpose. — The purpose of this chapter is to subject certain insurers to the jurisdiction of the insurance commissioner and the courts of this state in suits by or on behalf of the state. The general assembly declares that it is concerned with the protection of residents of this state against acts by insurers not authorized to do an insurance business in this state, by the maintenance of fair and honest insurance markets, by protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of such state interest, the general assembly provides methods in this chapter for substituted service of process upon such insurers in any proceeding, suit, or action in any court and substituted service of any notice, order, pleading, or process upon such insurers in any proceeding by the commissioner of insurance to enforce or effect full compliance with this

title. In so doing, the state exercises its powers to protect residents of this state and to define what constitutes transacting an insurance business in this state, and also exercises powers and privileges available to this state by virtue of 15 U.S.C. 1011 through 1015, as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. [Acts 1969, ch. 194, § 1; P.L.252-1985, § 165.]

Cross References. Unauthorized Insurers False Advertising Process Act, IC 27-4-6.
Unauthorized Insurers Process Act, IC 27-4-4.

Cited: Indiana Dep't of Ins. v. Zenith Re-Insurance Co., 596 N.E.2d 228 (Ind. 1992).

27-4-5-2. Transaction of business without certificate of authority prohibited — Penalty — Exceptions — Acts constituting the transaction of business — Validity of contracts — Liability of person aiding unauthorized insurer. — (a) It is a Class A infraction for an insurer to transact insurance business in this state, as set forth in subsection (b), without a certificate of authority from the commissioner. However, this section does not apply to the following:

- (1) The lawful transaction of surplus lines insurance.
- (2) The lawful transaction of reinsurance by insurers.
- (3) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
- (5) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.
- (6) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargos, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
- (7) Transactions in this state involving life insurance, health insurance, or annuities provided to religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions.
- (8) Transactions in this state involving contracts of insurance not readily obtainable in the ordinary insurance market and issued to one (1) or more industrial insureds. For purposes of this section, an "industrial insured" means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly retained and continuously qualified insurance consultant;

(B) Whose aggregate annual premium for insurance on all risks totals at least twenty-five thousand dollars (\$25,000); and

(C) Who has at least twenty-five (25) full-time employees.

(9) Transactions in Indiana involving the rendering of any service by any ambulance service provider and all fees, costs, and membership payments charged for the service. To qualify under this subdivision, the ambulance service provider:

(A) Must have its ambulance service program approved by an ordinance of the legislative body of the county or city in which it operates; and

(B) May not offer any membership program that includes benefits exceeding one (1) year in duration.

(b) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer constitutes the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all persons engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

(1) The making of or proposing to make, as an insurer, an insurance contract.

(2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

(3) The taking or receiving of any application for insurance.

(4) The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for any insurance or any part thereof.

(5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

(6) Acting as an agent for or otherwise representing or aiding on behalf of another person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or representing or assisting a person or an insurer in the transaction of insurance with respect to subjects of insurance resident, located, or to be performed in this state. This subdivision does not prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of the employer.

(c)(1) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority does not impair the validity of any act or contract of such insurer and does not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority may maintain an action in any court of this state to enforce any right, claim, or demand arising out of the transaction of such business until such insurer obtains a certificate of authority.

(2) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract is liable to the insured for the full amount of the claim or loss in the manner provided by the insurance contract. [Acts 1969, ch. 194, § 2; 1978, P.L. 2, § 2720; P.L.161-1988, § 1; P.L.116-1994, § 51; P.L.130-1994, § 39; P.L.252-1995, § 2.]

Cross References. Certificate of authority, foreign and alien companies, IC 27-1-17-8, IC 27-1-18-4.

Certificate of authority, foreign company reincorporated under Indiana law, IC 27-1-19-4.

Infraction and ordinance violation enforcement proceedings, IC 34-28-5.

Writing of policies before issuance of certificate of authority prohibited, IC 27-1-6-11, IC 27-1-6-12.

NOTES TO DECISIONS

ANALYSIS

In general.
Doing business in this state.
Foreign reinsurer.

In General.

Where a claimant was insured by an unauthorized insurer in violation of this section, and that insurer defaulted, an agency that assisted in the procurement of the unauthorized insurance was liable on the claimant's claim. *Wayne Chem., Inc. v. Columbus Agency Serv. Corp.*, 567 F.2d 692 (7th Cir. 1977).

Doing Business in this State.

A single contract of insurance constituted doing business in this state. *Indiana Dep't of Ins. v. Zenith Re-Insurance Co.*, 596 N.E.2d 228 (Ind. 1992).

Foreign Reinsurer.

Foreign reinsurer's issuance of a single insurance policy was sufficient to trigger the provisions of this chapter. *Indiana Dep't of Ins. v. Zenith Re-Insurance Co.*, 583 N.E.2d 201 (Ind. App. 1991), *aff'd*, 596 N.E.2d 228 (Ind. 1992).

Foreign reinsurer "delivered" a policy to a firm in Indiana within the meaning of subsection (b)(5) of this section where the reinsurer's employee completed the application for insurance in Indiana, telephoned another employee in the Grand Turks and authorized him to "accept" the application, and a "written acceptance," in the form of a contract, was mailed to Indiana from the Grand Turks. *Indiana Dep't of Ins. v. Zenith Re-Insurance Co.*, 583 N.E.2d 201 (Ind. App. 1991), *aff'd*, 596 N.E.2d 228 (Ind. 1992).

27-4-5-3. Injunction against unauthorized insurers. — Whenever the commissioner believes, from evidence satisfactory to the commissioner, that any insurer is violating or about to violate the provisions of section 2 [IC 27-4-5-2] of this chapter, the commissioner may cause a complaint to be filed in the circuit or superior court to enjoin and restrain such insurer from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such

preliminary or final injunctive relief as in its judgment is proper. [Acts 1969, ch. 194, § 3; P.L.252-1985, § 166; P.L.255-1995, § 5.]

Collateral References. Construction and application of state statutes or rules of court predicated in personam jurisdiction over nonresidents or foreign corporations on making or performing a contract within the state. 23 A.L.R.3d 551.

27-4-5-4. Activities constitute consent to substituted service —

Procedure. — (a) Any act of transacting an insurance business as set forth in section 2 [IC 27-4-5-2] of this chapter by any unauthorized insurer is equivalent to and shall constitute an irrevocable appointment by such insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the secretary of state or his successor in office, to be the true and lawful attorney of such insurer upon whom may be served all lawful process in any action, suit, or proceeding in any court by the commissioner of insurance or by the state and upon whom may be served any notice, order, pleading, or process in any proceeding before the commissioner of insurance and which arises out of transacting an insurance business in this state by such insurer. Any act of transacting an insurance business in this state by any unauthorized insurer shall be signification of its agreement that any such lawful process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such administrative proceeding before the commissioner of insurance so served shall be of the same legal force and validity as personal service of process in this state upon such insurer.

(b) Service of process in such action shall be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his office, two (2) copies thereof and by payment to the secretary of state of the fee prescribed by law. Service upon the secretary of state as such attorney shall be service upon the principal.

(c) The secretary of state shall forthwith forward by certified mail one (1) of the copies of such process or such notice, order, pleading, or process in proceedings before the commissioner to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided:

(1) Notice of such service and a copy of the court process or the notice, order, pleading, or process in such administrative proceeding are sent within ten (10) days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the commissioner of insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at the last known place of business of the defendant in the court or administrative proceeding; and

(2) The defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the

letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in court proceeding or of the commissioner of insurance in administrative proceeding, showing compliance therewith are filed with the clerk of the court in which such action, suit, or proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within such further time as the court or commissioner of insurance may allow.

(d) No plaintiff shall be entitled to a judgment or a determination by default in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the commissioner of insurance is served under this section until the expiration of forty-five (45) days from the date of filing of the affidavit of compliance.

(e) Nothing in this section shall limit or affect the right to serve any process, notice, order, or demand upon any person or insurer in any other manner permitted by law. [Acts 1969, ch. 194, § 4; 1971, P.L. 1, § 10; P.L.252-1985, § 167.]

27-4-5-5. Prerequisites to pleading by unauthorized insurer. —

(a) Before any unauthorized insurer files or causes to be filed in any pleading in any court action, suit, or proceeding or in any notice, order, pleading, or process in such administrative proceeding before the commissioner instituted against such person or insurer, by services made as provided in section 4 [IC 27-4-5-4] of this chapter, such insurer shall either:

(1) Deposit with the clerk in which such action, suit, or proceeding is pending, or with the commissioner of insurance in administrative proceedings before the commissioner, cash or securities, or file with such clerk or commissioner a bond with good and sufficient sureties, to be approved by the clerk or commissioner in an amount to be fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding; or

(2) Procure a certificate of authority to transact the business of insurance in this state.

In considering the application of an insurer for a certificate of authority, for the purposes of this section the commissioner need not assert the provisions of IC 27-1-20-12 against such insurer with respect to its application if he determines that such company would otherwise comply with the requirements for such certificate of authority.

(b) The commissioner of insurance, in any administrative proceeding in which service is made as provided in section 4 of this chapter, may in his discretion order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) and to defend such action.

(c) Nothing in subsection (a) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in section 4 of this chapter on the ground that such unauthorized insurer has not done any of the acts

enumerated in section 2 [IC 27-4-5-2] of this chapter. [Acts 1969, ch. 194, § 5; P.L.252-1985, § 168.]

Cross References. Certified copy of certificate of authority as evidence, IC 27-1-6-18.

27-4-5-6. Foreign decrees — Enforcement. — (a) The attorney general upon request of the commissioner may proceed in the courts of this state or any reciprocal state to enforce an order or decision in any court proceeding or in any administrative proceeding before the commissioner of insurance.

(b) The following definitions apply throughout this section:

(1) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states or territories of the United States, against any insurer incorporated or authorized to do business in said state or territory.

(2) "Foreign decree" means any decree or order in equity of a court located in a "reciprocal state," including a court of the United States located therein, against any insurer incorporated or authorized to do business in this state.

(3) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state.

(c) The insurance commissioner of this state shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.

(d) A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit or superior court of this state. The clerk, upon verifying with the insurance commissioner that the decree or order qualifies as a "foreign decree" shall treat the foreign decree in the same manner as a decree of a circuit or superior court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a circuit or superior court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a decree of a circuit or superior court of this state and may be enforced or satisfied in like manner.

(e) At the time of the filing of the foreign decree, the attorney general shall make and file with the clerk of the court an affidavit setting forth the name and last known post office address of the defendant.

(f) Promptly upon the filing of the foreign decree and the affidavit, the clerk shall mail notice of the filing of the foreign decree to the defendant at the address given and to the insurance commissioner of this state and shall make a note of the mailing in the docket. In addition, the attorney general may mail a notice of the filing of the foreign decree to the defendant and to the insurance commissioner of this state and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the attorney general has been filed.

(g) No execution or other process for enforcement of a foreign decree filed under this section shall issue until 30 days after the date the decree is filed.

(h) If the defendant shows the circuit or superior court that an appeal from the foreign decree is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the defendant has furnished the security for the satisfaction of the decree required by the state in which it was rendered.

(i) If the defendant shows the circuit or superior court any ground upon which enforcement of a decree of any circuit or superior court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this state.

(j) Any person filing a foreign decree shall pay to the clerk of court six dollars (\$6). Fees for docketing, transcription, or other enforcement proceedings shall be as provided for decrees of the circuit or superior court. [Acts 1969, ch. 194, § 6; P.L.1-1993, § 201.]

27-4-5-7. [Repealed.]

Compiler's Notes. This section, providing the penalty for unauthorized acts by unauthorized insurers, was repealed by § 2728 of Acts 1978, P.L. 2. For the present penalty provisions, see IC 27-4-5-2.

27-4-5-8. Short title. — This chapter may be cited as the Uniform Unauthorized Insurers Act. [Acts 1969, ch. 194, § 8; P.L.252-1985, § 169.]

CHAPTER 6

UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT

SECTION.	SECTION.
27-4-6-1. Purpose of chapter — Legislative intent — Liberal construction.	27-4-6-5. Appointment of commissioner as attorney — Notice — Service — Judgment.
27-4-6-2. Definitions.	27-4-6-6. Short title.
27-4-6-3. False advertising — Notice to domiciliary supervisory official.	
27-4-6-4. Action by commissioner for failure to cease false advertising.	

27-4-6-1. Purpose of chapter — Legislative intent — Liberal construction. — (a) The purpose of this chapter is to subject to the jurisdiction of the insurance commissioner of this state and to the jurisdiction of the courts of this state insurers, not authorized to transact business in this state, which place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers which solicit insurance business in this state in the manner set forth in the preceding sentence that such insurers be subject to the provisions of this chapter. In furtherance of such state interest, the

legislature provides in this chapter a method of substituted service of process upon such insurers and declares that in so doing, it exercises its power to protect its residents and also exercises powers and privileges available to the state by virtue of 15 U.S.C. 1011 et seq., which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states; the authority provided in this chapter to be in addition to any other powers of this state.

(b) The provisions of this chapter shall be liberally construed. [Acts 1963, ch. 163, § 1; P.L.252-1985, § 170.]

Cross References. Unauthorized Insurers Process Act, IC 27-4-4.

Uniform Unauthorized Insurance Act, IC 27-4-5.

Unfair Trade Practice Act, IC 27-4-1.

27-4-6-2. Definitions. — When used in this chapter:

“Commissioner” shall mean the commissioner of insurance of this state.

“Residents” shall mean and include person, partnership, limited liability company, or corporation, domestic, alien, or foreign. [Acts 1963, ch. 163, § 2; P.L.252-1985, § 171; P.L.8-1993, § 419.]

27-4-6-3. False advertising — Notice to domiciliary supervisory official. — No unauthorized foreign or alien insurer of the kind described in section 1 [IC 27-4-6-1] of this chapter shall make, issue, circulate, or cause to be made, issued, or circulated, to residents of this state any estimate, illustration, circular, pamphlet, or letter, or cause to be made in any newspaper, magazine, or other publication or over any radio or television station, any announcement or statement to such residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of IC 27-4-1, and whenever the commissioner shall have reason to believe that any such insurer is engaging in such unlawful advertising, he shall give notice of such fact by registered mail to such insurer and to the insurance supervisory official of the domiciliary state of such insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States. [Acts 1963, ch. 163, § 3; P.L.252-1985, § 172.]

Collateral References. Waiver or estoppel on basis of statements in promotional or

explanatory literature issued to insureds. 36 A.L.R.3d 541.

27-4-6-4. Action by commissioner for failure to cease false advertising. — If after thirty (30) days following the giving of the notice mentioned in section 3 [IC 27-4-6-3] of this chapter such insurer has failed to cease making, issuing, or circulating such misrepresentations or causing the same to be made, issued, or circulated in this state, and if the commissioner has reason to believe that a proceeding by him in respect to such matters would be to the interest of the public, and that such insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on such contracts or doing any of the acts enumerated

in section 5 [IC 27-4-6-5] of this chapter, he shall take action against such insurer under IC 27-4-1. [Acts 1963, ch. 163, § 4; P.L.252-1985, § 173.]

27-4-6-5. Appointment of commissioner as attorney — Notice — Service — Judgment. — (a) Any of the following acts in this state, effected by mail or otherwise, by any such unauthorized foreign or alien insurer:

- (1) The issuance or delivery of contracts of insurance to residents of this state;
- (2) The solicitation of applications for such contracts;
- (3) The collection of premiums, membership fees, assessments or other considerations for such contracts; or
- (4) Any other transaction of insurance business;

is equivalent to and shall constitute an appointment by such insurer of the commissioner of insurance, and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in section 3 [IC 27-4-6-3] of this chapter under the provisions of IC 27-4-1 or in any action, suit, or proceeding for the recovery of any penalty therein provided, and any such act shall be signification of its agreement that such service of statement of charges, notices, or process is of the same legal force and validity as personal service of such statement of charges, notices, or process in this state, upon such insurer.

(b) Service of a statement of charges and notices under IC 27-4-1 shall be made by any deputy or employee of the department of insurance delivering to and leaving with the commissioner or some person in apparent charge of his office, two (2) copies thereof. Service of process issued by any court in any action, suit, or proceeding to collect any penalty under IC 27-4-1 shall be made by delivering and leaving with the commissioner, or some person in apparent charge of his office, two (2) copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one (1) of the copies of such statement of charges, notices, or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices, and process so served. Such service of statement of charges, notices, or process shall be sufficient provided they shall have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing such letter showing a compliance with this section are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.

(c) Service of statement of charges, notices, and process in any such proceeding, action, or suit shall, in addition to the manner provided in subsection (b), be valid if served upon any person within this state who on behalf of such insurer is:

- (1) Soliciting insurance;
- (2) Making, issuing, or delivering any contract of insurance; or
- (3) Collecting or receiving in this state any premium for insurance; and a copy of such statement of charges, notices, or process is sent within ten (10) days thereafter by registered mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the same showing a compliance with this section are filed with the commissioner in the case of any statement of charges or notices, or with the clerk of the court in which such action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

(d) No cease or desist order or judgment by default or a judgment by confession under this section shall be entered until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.

(e) Service of process and notice under the provisions of this chapter shall be in addition to all other methods of service provided by law, and nothing in this chapter shall limit or prohibit the right to serve any statement of charges, notices, or process upon any insurer in any other manner permitted by law. [Acts 1963, ch. 163, § 5; P.L.252-1985, § 174.]

27-4-6-6. Short title. — This chapter may be cited as the Unauthorized Insurers False Advertising Process Act. [Acts 1963, ch. 163, § 7; P.L.252-1985, § 175.]

CHAPTER 7

FOREIGN COMPANIES TO PLACE INSURANCE THROUGH INDIANA OFFICE

27-4-7-1 — 27-4-7-4. [Repealed.]

Compiler's Notes. This chapter, concerning foreign insurance companies' placement of insurance through their Indiana office, was repealed by P.L.108-1985, § 1; P.L.252-1985, §§ 176-178; and P.L.1-1993, § 202, effective May 4, 1993.

CHAPTER 8

FOREIGN PLATE GLASS INSURERS

SECTION.

27-4-8-1. Plate glass insurance — Regulations.

27-4-8-1. Plate glass insurance — Regulations. — Any person or persons, or any copartnership, company, or corporation organized under the laws of any other state than this state, or any foreign country, and engaged in the business of insuring plate glass, shall be allowed and permitted to do and transact such business in this state when such company is possessed of at least one hundred thousand dollars (\$100,000) of actual capital invested

in the stock or bonds of some one (1) or more of the states of this Union or of the United States, or the bonds of some one (1) or more of the counties, cities, or towns of this state at the current value thereof, and when such company and its agents shall have fully complied with all the provisions and requirements of the laws of this state regulating foreign insurance companies, except so much thereof as requires a capital of two hundred thousand dollars (\$200,000); Provided, That companies engaged in insuring plate glass and having less than two hundred thousand dollars (\$200,000) capital invested as required in this chapter shall not engage in or transact any other kind of business; Provided, That whenever it shall appear to the insurance commissioner that any such company, having one hundred thousand dollars (\$100,000) capital, shall have been, directly or indirectly, doing business in this state prior to March 9, 1889, he shall not issue license to such company, or authorize it to do business in this state, until it shall have paid all taxes, fees, and penalties which should have been chargeable to it had it, during such time, been authorized to do business in this state, and not violated any of the laws governing foreign insurance companies. [Acts 1889, ch. 199, § 1, p. 359; P.L.252-1985, § 179.]

ARTICLE 5

FARMERS' MUTUAL INSURANCE

CHAPTER

1. FARMERS' MUTUAL COMPANIES, 27-5-1-1 — 27-5-1-15.
2. FARMERS' MUTUALS — ADDITIONAL KINDS OF INSURANCE, 27-5-2-1.
3. FARMERS' MUTUALS — AUTHORIZATION TO WRITE ALL TYPES OF INSURANCE, 27-5-3-1 — 27-5-3-5.
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5. FIRE AND LIGHTNING MUTUALS — FARM PROPERTY, 27-5-5-1, 27-5-5-2.

CHAPTER

6. WIND, HAIL AND CYCLONE MUTUAL — ALL PROPERTY, 27-5-6-1, 27-5-6-2.
7. WIND, HAIL AND CYCLONE MUTUAL — FARM PROPERTY, 27-5-7-1.
8. LIVESTOCK INSURANCE — 7-COUNTY MUTUALS, 27-5-8-1 — 27-5-8-4.
9. LIVESTOCK INSURANCE, 27-5-9-1 — 27-5-9-22.
10. FARMERS' MUTUAL ASSOCIATIONS — FORMATION, 27-5-10-1.
- 11, 12. [REPEALED.]

CHAPTER 1

FARMERS' MUTUAL COMPANIES

SECTION.

- 27-5-1-1. Articles of incorporation — Amendments.
- 27-5-1-2. Approval of commissioner of insurance — Powers.
- 27-5-1-3. Bylaws — Election of officers.
- 27-5-1-4. Certificate of authority — Conditions for granting.
- 27-5-1-5. Meetings — Quorum — Election of directors.
- 27-5-1-6. Property on which policies may be issued.
- 27-5-1-7. Insurable hazards — Limitations on net retention.
- 27-5-1-8. Territorial limits for location of insured property — Extension.

SECTION.

- 27-5-1-9. Classification and rates.
- 27-5-1-10. Collections from members of fees, charges and assessments — Reserve fund.
- 27-5-1-11. Directors — Power to borrow — Losses.
- 27-5-1-12. Withdrawals — Surrender of policy.
- 27-5-1-13. Annual report of president and secretary.
- 27-5-1-14. Applicability of chapter — Existing insurance companies.
- 27-5-1-15. Exemption from other insurance laws.

27-5-1-1. Articles of incorporation — Amendments. — A farmers' mutual insurance company may be organized to effect insurance against loss or damage by fire, lightning, windstorm and hail, in any one (1) county, or in not exceeding three (3) adjoining counties. For this purpose, any number of persons, not less than one hundred (100), residing within the territory of such proposed company as hereinbefore provided, may make in duplicate articles of incorporation giving the name of the company, names and addresses of the officers and directors and the names and addresses of the incorporators, all of whom shall have insurable farm property in the territory which shall be designated in the articles as that in which the company proposed to operate. The articles may be amended by a two-thirds ($\frac{2}{3}$) vote of the members present at any meeting of members: Provided, That each member shall have been given not less than thirty (30) days' notice of such meeting and proposed amendments. [Acts 1919, ch. 145, § 1, p. 673; 1927, ch. 243, § 1, p. 718.]

Cross References. Actuaries may administer oaths, IC 27-2-1-1.

Additional insurable hazards, IC 27-5-2-1, IC 27-5-4-1.

Authorization to write all types of insurance, IC 27-5-3.

Farmers' mutual associations, IC 27-5-10-1.

Fire and lightning mutuals, IC 27-5-5-1, IC 27-5-5-2.

Formation of farmers' mutuals, IC 27-5-10-1.

Insurance inspections, IC 34-30-17.

Livestock insurance, IC 27-5-9.

Seven-county mutuals, livestock insurance, IC 27-5-8.

Wind, hail and cyclone mutuals, all property, IC 27-5-6-1, IC 27-5-6-2.

Wind, hail and cyclone mutuals, farm property, IC 27-5-7-1.

Indiana Law Review. Analysis of the Farmer's Comprehensive Liability Policy, 24 Ind. L. Rev. 1451 (1991).

27-5-1-2. Approval of commissioner of insurance — Powers. —

(a) The articles of incorporation shall be submitted in duplicate to the insurance commissioner (called "the commissioner" in this chapter). Upon approval by the commissioner, one (1) copy shall be filed in the commissioner's office and the other copy, together with the certificate of approval, shall be returned to the incorporators. A fee of three hundred fifty dollars (\$350) shall be paid to the commissioner for the filing of the articles of incorporation.

(b) The corporation shall have legal existence from the date of approval of the articles of incorporation. The incorporators and all others that become associated with them and their successors shall constitute a corporation for all the purposes of this chapter, with the power to:

(1) Sue and be sued;

(2) Acquire, hold, convey, or dispose of real or personal property; and

(3) Do all acts and things necessary or convenient in the transaction of the business authorized by this chapter.

(c) Amendments to the articles of incorporation shall be filed and approved in the manner described in subsection (a). For the filing of such amendments, there shall be paid to the commissioner a fee of ten dollars (\$10). [Acts 1919, ch. 145, § 2, p. 673; 1921, ch. 261, § 1, p. 773; P.L.252-1985, § 180; P.L.31-1988, § 16.]

27-5-1-3. Bylaws — Election of officers. — The directors named in the articles shall adopt bylaws and elect temporary officers and prescribe the forms of application and policy to be used by said company. A copy of such bylaws and form of application and policy, certified by the secretary, shall be filed with the commissioner, and, upon his approval thereof, the company shall be entitled to solicit applications for policies of insurance. Changes in the bylaws and form of applications or policy shall be filed and approved in like manner. Upon the filing of any such instrument and upon his approval thereof there shall be paid to the commissioner a fee of ten dollars (\$10) and a like amount upon the filing and approval of any changes in the bylaws, or form of application or policy. [Acts 1919, ch. 145, § 3, p. 673; 1921, ch. 261, § 2, p. 773; P.L.31-1988, § 17.]

27-5-1-4. Certificate of authority — Conditions for granting. — No policy of insurance shall be issued until the company shall hold at least two hundred fifty (250) applications for a total insurance of not less than five hundred thousand dollars (\$500,000) nor until such applications shall have been submitted to and approved by the commissioner, who shall thereupon grant a certificate of authority to said company to issue policies under this chapter. [Acts 1919, ch. 145, § 4, p. 673; 1927, ch. 243, § 2, p. 718; P.L.252-1985, § 181.]

27-5-1-5. Meetings — Quorum — Election of directors. — At all meetings of the members, each member shall be entitled to one (1) vote. Ten (10) members shall constitute a quorum. The election of directors shall be by ballot. [Acts 1919, ch. 145, § 5, p. 673.]

27-5-1-6. Property on which policies may be issued. — Such company may issue policies upon farm dwellings and other farm buildings, including silos, and the contents of such buildings; farm machinery, vehicles, automobiles, auto trucks, tractors, threshing outfits, and other farm equipment; farm products, live stock, schoolhouses, churches, and such other risks as are owned principally by farmers. [Acts 1919, ch. 145, § 6, p. 673; 1927, ch. 243, § 3, p. 718.]

Opinions of Attorney General. Mutual farm insurance companies may insure property situated in other than rural districts, including villages or unincorporated towns. 1940, p. 128.

27-5-1-7. Insurable hazards — Limitations on net retention. — No such company shall insure property against any hazards except those of fire, lightning, windstorm and hail; nor shall it insure any building and contents or group of buildings and contents subject to destruction by a single fire for a greater net retention than two thousand dollars (\$2,000) until its insurance in force shall be equal to one million dollars (\$1,000,000) or more; nor shall its net retention later on any such building and contents or group of buildings and contents be for a sum greater than one fifth of one per cent ($\frac{1}{5}\%$) of the insurance in force. [Acts 1919, ch. 145, § 7, p. 673; 1927, ch. 243, § 4, p. 718.]

Cross References. Additional kinds of insurance authorized, IC 27-5-2-1 — IC 27-5-4-4.

27-5-1-8. Territorial limits for location of insured property — Extension. — Except as hereinafter provided, such company shall not insure any property located outside the territory described in its articles of incorporation. Any company whose aggregate insurance amounts to not less than five million dollars (\$5,000,000) may increase its territory by a majority vote of its directors or of the members present and voting at any meeting of members to not exceeding ten (10) counties. Any company whose aggregate insurance amounts to not less than ten million dollars (\$10,000,000) may further increase its territory to more than ten (10) counties by a majority vote of its board of directors, or of the members present and voting at any meeting of members. Any such company may issue policies of reinsurance to other mutual companies operating in this state and may accept policies of reinsurance from other companies, and may also issue policies of insurance jointly with other companies. [Acts 1919, ch. 145, § 8, p. 673; 1927, ch. 243, § 5, p. 718.]

27-5-1-9. Classification and rates. — Such company may classify property insured under different rates, corresponding, as nearly as possible, to the greater or less fire hazard that the property in question may be deemed to involve. [Acts 1919, ch. 145, § 9, p. 673.]

27-5-1-10. Collections from members of fees, charges and assessments — Reserve fund. — The company shall collect from its members such fees, initial charges, and assessments as the directors shall find necessary or as prescribed in the by-laws. Each member shall be liable for his share of the amount necessary to pay all losses and necessary expenses incurred, and to maintain a reserve or safety fund, while his insurance has been in force, provided that the company may in its by-laws limit the contingent liability of its members during any one (1) year to an amount equal to not less than three per cent (3%) of the insurance carried. If any member shall fail or refuse to pay his share of such losses and expenses, including the assessment or assessments levied, the directors may enforce the same by proper suits and proceedings. Such companies may collect and maintain such reserves as the by-laws may provide. [Acts 1919, ch. 145, § 10, p. 673; 1927, ch. 243, § 6, p. 718.]

27-5-1-11. Directors — Power to borrow — Losses. — The directors may borrow for the payment of losses an amount not to exceed three dollars (\$3.00) on each thousand dollars (\$1,000) of insurance in force: Provided, That any sum necessary to pay such loan in full shall be included in the next assessment, and such assessment shall be levied not later than twelve (12) months after the incurring of the losses paid from such loan. [Acts 1919, ch. 145, § 11, p. 673.]

27-5-1-12. Withdrawals — Surrender of policy. — Any member of such company may withdraw therefrom, upon written notice to the company

as provided in the policy, the surrender of his policy and the payment of his share of all losses and expenses incurred while his policy remained in force. The company may cancel any policy upon five (5) days' written notice to the member. Such company may, in its by-laws, provide for the suspension of its liability for loss upon any policy from the date when an unpaid assessment has become due, and the payment of such assessment shall only reinstate such policy from the date of such payment, and no allowance shall be made in any assessment because of such suspension. [Acts 1919, ch. 145, § 12, p. 673.]

27-5-1-13. Annual report of president and secretary. — (a) The president and secretary shall annually make and file with the commissioner such report as the commissioner may require, accompanied by a fee of twenty-five dollars (\$25).

(b) The commissioner may at any time examine the books and affairs of the company. If the commissioner finds that the company is not paying its losses and otherwise complying with law, or is conducting its business in a manner detrimental to the interests of the policyholders or the public, the commissioner shall:

- (1) Order the levy of an assessment if necessary;
- (2) Order the company to cease issuing new policies; or
- (3) Take such other action as shall best protect the interests of the insured.

(c) The expense of making any such examination shall be paid by the company examined. [Acts 1919, ch. 145, § 13, p. 673; 1921, ch. 261, § 3, p. 773; P.L.31-1988, § 18.]

Cross References. Annual statement, IC 27-1-3-13, IC 27-1-20-21.

Opinions of Attorney General. All county farmers' mutual insurance companies, except those organized by special charter, are

required to make annual reports on forms prescribed by the insurance department and to file same with the insurance commissioner; the applicable filing fee is \$5.00. 1942, p. 191.

27-5-1-14. Applicability of chapter — Existing insurance companies. — (a) No insurance company in existence on September 30, 1919, shall be affected by this chapter, unless it shall elect to conduct its business in compliance with this chapter and shall so order by a resolution adopted by its board of directors or its members, certified by the secretary, and filed with the commissioner and approved by him, and the commissioner shall be entitled to collect a fee of ten dollars (\$10) for such service.

(b) No insurance company organized as of September 30, 1919, in the state and transacting principally the business mentioned in this chapter shall affect any insurance in this state after January 1, 1925, unless it shall have elected to transact its business under this chapter or under the provisions of Acts 1915, c.140.

(c) Any insurance company organized as of September 30, 1919, and issuing tornado or windstorm insurance shall be permitted to continue such class of insurance.

(d) Any insurance company or association organized prior to January 1, 1870, shall not come under the provisions of this chapter unless it so elects.

[Acts 1919, ch. 145, § 14, p. 673; 1921, ch. 261, § 4, p. 773; P.L.252-1985, § 182; P.L.31-1988, § 19.]

27-5-1-15. Exemption from other insurance laws. — Any company organized under this chapter or having elected to become subject to its provisions shall be exempt from all other provisions of this title, and no statute enacted after September 30, 1919, shall apply to such companies unless such statute shall expressly declare that it is applicable to county farmers' mutual fire insurance companies. [Acts 1919, ch. 145, § 15, p. 673; P.L.252-1985, § 183.]

Cross References. Enumerations of insurance laws applicable to farmers' mutual companies, IC 27-5-3-3, IC 27-5-3-4.

Exemption of domestic mutual fire insurance companies from Indiana Insurance Law of 1935, IC 27-1-20-27.

Exemption of farmers' mutual hail, fire or windstorm insurance from Indiana Insurance Law of 1935, IC 27-1-20-26.

CHAPTER 2

FARMERS' MUTUALS — ADDITIONAL KINDS OF INSURANCE

SECTION.

27-5-2-1. Additional insurable hazards.

27-5-2-1. Additional insurable hazards. — Every farmers' mutual insurance company organized and operating under and pursuant to IC 27-5-1 is authorized to write, make, or take the following kinds of insurance, only upon the property and within the territorial limitations described in IC 27-5-1:

(1) Insurance against loss or damage, including loss of rents, use, and occupancy caused by:

- (A) Fire, smoke, smudge, lightning, or other electrical disturbance; or
- (B) Falling or moving bodies or vehicles, except loss or damage to the bodies or vehicles themselves, and except liability resulting from the ownership, maintenance, use, or operation of the vehicle.

(2) Any other kind or kinds of insurance, authorized or permitted on or after February 5, 1943, to be written by domestic fire insurance companies organized and operating under and pursuant to IC 27-1 and for which specific provision is not made in this chapter.

However, the kinds of insurance described in subdivision (2) shall not include the kinds of insurance specifically excepted in subdivision (1)(B), and liability insurance, worker's compensation, fidelity, and surety insurance. [Acts 1943, ch. 10, § 1, p. 19; P.L.252-1985, § 184; P.L.28-1988, § 80.]

Cross References. Authority to write additional kinds of insurance, IC 27-5-3-1, IC 27-5-4-1.

Collateral References. 43 Am. Jur. 2d Insurance §§ 472, 479, 489, 524.

Farmowners' liability insurance risks and coverage. 93 A.L.R.3d 472; 31 A.L.R.4th 957; 33 A.L.R.4th 983; 34 A.L.R.4th 761; 35 A.L.R.4th 1063.

CHAPTER 3

FARMERS' MUTUALS — AUTHORIZATION TO WRITE ALL TYPES OF INSURANCE

SECTION.

- 27-5-3-1. Authorization to write all kinds of insurance.
- 27-5-3-2. Surplus required — How determined and valued.
- 27-5-3-3. Company subject to existing insur-

SECTION.

- ance laws — No suit provision — Agent's license.
- 27-5-3-4. Motor vehicle liability policy requirements.
- 27-5-3-5. Rights and powers supplemental.

27-5-3-1. Authorization to write all kinds of insurance. — Upon compliance with the provisions of this chapter, every farmers' mutual insurance company organized and operating under and pursuant to the provisions of IC 27-5-1 is hereby authorized to write, make, or take, with respect to farming operations and persons, firms, limited liability companies, or corporations whose principal occupation or activity is farming and within the territorial limitations described in IC 27-5-1 any kind or kinds of insurance and reinsurance authorized or permitted on or after March 13, 1953, to be written by domestic insurers under and pursuant to the provisions of IC 27-1-6-16 and for which authorization or permission is not provided by statutes in effect on March 13, 1953, under which such farmers' mutual insurance companies operate. [Acts 1953, ch. 229, § 1; P.L.252-1985, § 185; P.L.8-1993, § 420.]

Cross References. Additional reinsurance authorized, IC 27-6-2-1.
 Authorization to write additional kinds of insurance, IC 27-5-4-1.

Collateral References. Farmowners' liability insurance risks and coverage. 93 A.L.R.3d 472; 31 A.L.R.4th 957; 33 A.L.R.4th 983; 34 A.L.R.4th 761; 35 A.L.R.4th 1063.

27-5-3-2. Surplus required — How determined and valued. — To make any one (1) or more of the kinds of insurance authorized by this chapter and not authorized before March 13, 1953, such farmers' mutual insurance company shall possess a surplus over and above all liabilities, including, without limiting the generality thereof, a reserve for unearned premiums or assessments collected, of not less in amount of the capital and surplus, or unassigned surplus required of such domestic insurance companies writing multiple line insurance under IC 27-1-6-16. In computing such amount, assets and liabilities of such company shall be determined and valued in the same manner as they are determined and valued in any other domestic insurance company under IC 27-1, including, without limiting the generality thereof, the requirements of IC 27-1-13-8. [Acts 1953, ch. 229, § 2; P.L.252-1985, § 186.]

27-5-3-3. Company subject to existing insurance laws — No suit provision — Agent's license. — (a) With respect to writing, making, or taking the kinds of insurance specifically excepted in IC 27-5-2-1(1)(B) and with respect to writing, making, or taking liability insurance, worker's compensation, fidelity, and surety insurance such farmers' mutual insur-

ance company shall be subject to the following statutes, anything in IC 27-1 or IC 27-5-1 to the contrary notwithstanding:

(1) IC 27-1-3, IC 27-9, IC 27-1-5-3, IC 27-1-6-15, IC 27-1-7-14, IC 27-1-7-15, IC 27-1-7-16, IC 27-6-1.1-2, IC 27-1-7-21, IC 27-1-7-22, IC 27-1-7-23, IC 27-1-9, IC 27-1-13-3, IC 27-1-13-4, IC 27-1-13-6, IC 27-1-13-7, IC 27-1-13-8, IC 27-1-13-9, IC 27-1-20-1, IC 27-1-20-4, IC 27-1-20-6, IC 27-1-20-9, IC 27-1-20-10, IC 27-1-20-11, IC 27-1-20-14, IC 27-1-20-19, IC 27-1-20-20, IC 27-1-20-21, IC 27-1-20-23, IC 27-1-20-24 [repealed], and IC 27-1-20-30.

(2) All of IC 27-1-22.

(3) IC 27-1-13-7.

(4) All of IC 27-7-2.

(b) [Deleted by Acts 1967, ch. 233, § 2.]

(c) An agent representing a farmers' mutual insurance company with respect to insurance authorized to be written by this chapter and not authorized before March 13, 1953, to be written by a farmers' mutual insurance company shall comply with IC 27-1-15.5. [Acts 1953, ch. 229, § 3; P.L.252-1985, § 187; P.L.28-1988, § 81.]

Compiler's Notes. IC 27-1-20-24, referred to in subsection (a)(1), was repealed by Acts 1978, P.L. 2, § 2728.

Cross References. Application of Indiana Insurance Law, IC 27-1-2-2.

Exemption of domestic mutual fire insurance companies from Indiana Insurance Law of 1935, IC 27-1-20-27.

Exemption of farmers' mutual hail, fire or windstorm insurance from Indiana Insurance Law of 1935, IC 27-1-20-26.

Organization of farmers' mutual fire insurance companies, IC 27-5-10-1.

Regulation of insurance rates, application to farmers' mutual insurance companies, IC 27-1-22-2.

27-5-3-4. Motor vehicle liability policy requirements. — (a) To comply with motor vehicle insurance requirements under the Indiana safety responsibility laws, a motor vehicle liability policy issued by a farmers' mutual insurance company shall provide coverage for the insured motor vehicle owner or operator of the same amount, kind and extent as required in motor vehicle liability policies issued by other insurance carriers.

(b) A farmers' mutual insurance company issuing such policies of motor vehicle insurance as herein provided pursuant to the Indiana safety responsibility laws shall be subject to such other requirements thereof as are imposed upon domestic insurers issuing policies of motor vehicle liability or automobile bodily injury insurance covering risks resident or located in this state.

(c) Notwithstanding any limitations otherwise applicable, a farmers' mutual insurance company issuing policies of motor vehicle or other liability insurance may participate to the same extent as domestic insurers issuing policies for the same kind of insurance in voluntary assigned risk plans in connection with the safety responsibility laws of this state. [Acts 1953, ch. 229, § 4.]

Cross References. Financial responsibility, IC 9-25-1 — IC 9-25-8.

27-5-3-5. Rights and powers supplemental. — The rights and powers herein conferred shall be supplemental and in addition to those now conferred by law upon such farmers' mutual insurance companies. [Acts 1953, ch. 229, § 5.]

CHAPTER 4

FARMERS' MUTUALS — ADDITIONAL KINDS OF INSURANCE

SECTION.

- 27-5-4-1. Authority to write additional kinds of insurance.
27-5-4-2. Election to become subject to Indiana Insurance Law — Certificate of authority.

SECTION.

- 27-5-4-3. Merger or consolidation.
27-5-4-4. Voluntary liquidation and dissolution.

27-5-4-1. Authority to write additional kinds of insurance. — Every farmers' mutual insurance company organized and operating under and pursuant to the provisions of IC 27-5-1 is hereby authorized to write, make or take the following additional kinds of insurance as provided in this chapter:

- (a) Insurance on property authorized or permitted on or after March 10, 1967, to be insured by such companies against loss or damage by any peril or perils causing physical damage to such property; provided, however, that this subdivision shall not authorize any such company to write the kinds of insurance commonly known as automobile collision insurance or automobile comprehensive insurance.
- (b) Insurance on property authorized or permitted on or after March 10, 1967, to be insured by such companies against loss or damage by the theft of personal property.
- (c) Insurance on personal property authorized or permitted on or after March 10, 1967, to be insured by such companies while temporarily removed from the territory in which the company is authorized to write. [Acts 1967, ch. 241, § 1; P.L.252-1985, § 188.]

Cross References. Authority to write additional kinds of insurance, IC 27-5-2-1.
Authorization to write all kinds of insurance with respect to farming operations, IC 27-5-3-1.

Collateral References. Farmowners' lia-

bility insurance risks and coverage. 93 A.L.R.3d 472; 31 A.L.R.4th 957; 33 A.L.R.4th 983; 34 A.L.R.4th 761; 35 A.L.R.4th 1063.

Property damage insurance: what constitutes "contamination" within policy clause excluding coverage. 72 A.L.R.4th 633.

27-5-4-2. Election to become subject to Indiana Insurance Law — Certificate of authority. — Any such farmers' mutual insurance company may elect to become subject to the provisions of IC 27-1 as provided by IC 27-1-11-1 and thereafter may avail itself of all rights, privileges, and franchises provided by IC 27-1 in accordance with IC 27-1. Nothing contained in IC 27-1 shall affect nor invalidate any policies issued or bound by such company and in full force and effect at the time said election becomes effective, but any such policy or contract of insurance and the rights and obligations thereunder may continue in full force and effect until

expiration or termination; Provided, That not later than five (5) years following the effective date of said election, all such policies or contracts of insurance shall be subject to the provisions of IC 27-1. Any agent or representative of such company who is exempt from the provisions of IC 27-1-15.5 at the time said election becomes effective may continue to represent such company only within the scope of such existing representation without compliance with the provisions of IC 27-1-15.5 for a period not to exceed one (1) year following the effective date of said election, but thereafter such representation shall be subject to compliance with IC 27-1-15.5. Such election provided for in this section shall become effective upon the date of issuance of the new certificate of authority pursuant to IC 27-1-11-7. [Acts 1967, ch. 241, § 2; P.L.252-1985, § 189.]

27-5-4-3. Merger or consolidation. — (a) Any farmers' mutual insurance company, upon compliance with the provisions of this section, is hereby authorized to merge or consolidate with any other farmers' mutual insurance company or any other domestic mutual insurance company. Any such farmers' mutual insurance company desiring to merge or consolidate shall submit to the commissioner a copy of the proposed contract of merger or consolidation, together with a copy of the resolution of its board of directors approving such contract and stating the reasons such action is deemed to be in the best interest of the policyholders of such company. Such proposed contract shall state whether the surviving company in the event of merger, or the new company in the event of consolidation, shall operate under and pursuant to this article or shall operate under and pursuant to IC 27-1.

(b) Unless the commissioner shall find after a hearing thereon that such proposed merger or consolidation and the proposed contract is detrimental to the interests of said policyholders or the public or is contrary to the statutes under and pursuant to which the surviving or new company proposes to operate, he shall approve the proposed contract and shall authorize the company to submit the proposal to its policyholders at an annual or special meeting to be held after not less than thirty (30) days notice of such proposed merger or consolidation. Such notice shall comply with the provisions of the articles of incorporation or bylaws of such company in regard to notice to policyholders.

(c) Such proposal for merger or consolidation shall be submitted to the policyholders of the company to be merged or the companies to be consolidated for approval at such meeting. Approval shall require the affirmative vote of not less than two-thirds ($\frac{2}{3}$) of those policyholders voting in person or by proxy, if proxies are authorized by the articles of incorporation or bylaws of the company.

(d) Upon such approval by the policyholders, the company shall submit to the commissioner a copy of the minutes of the meeting at which such approval was voted and proof of proper notice as required by subsection (b).

(e) Upon satisfying himself of compliance with subsections (a), (b), (c), and (d), the commissioner shall grant written authorization to all parties to the proposed contract previously approved by him to proceed with the merger or consolidation in accordance with the terms of said contract

including specific authorization to effect such transfers of assets and liabilities as may be called for under the terms of said contract.

(f) Upon complete performance of the terms of said contract of merger or consolidation, the surviving party or the new company in the event of consolidation shall so notify the commissioner in writing on or before such date as may have been fixed by the commissioner.

(g) Unless the commissioner shall find after a hearing thereon that the terms of said contract of merger or consolidation have not been fully or properly performed or that the applicable statutes have not been complied with, he shall upon receiving notice of complete performance of the terms of said contract issue a certificate of the consummation of said merger or consolidation, identifying the surviving or new company, as the case may be, and the statute under and pursuant to which it is operating, and declaring the cessation of the separate existence of the other companies parties to such contract of merger or consolidation. Such certificate of consummation shall vest in the surviving or new company all rights, title, and interest in and to any property or choses in action owned, held, or in the name of any of the other companies so merged or consolidated. [Acts 1967, ch. 241, § 3; P.L.252-1985, § 190.]

27-5-4-4. Voluntary liquidation and dissolution. — Any farmers' mutual insurance company may voluntarily liquidate its affairs and dissolve in the manner provided in IC 27-1-10, the provisions of which are hereby made applicable to county farmers' mutual fire insurance companies and any other farmers' mutual insurance company organized or operating under this article. [Acts 1967, ch. 241, § 4; P.L.252-1985, § 191.]

CHAPTER 5

FIRE AND LIGHTNING MUTUALS — FARM PROPERTY

SECTION.

27-5-5-1. Organization — Kinds of property
that may be insured.

SECTION.

27-5-5-2. Incorporation — Powers — Con-
struction.

27-5-5-1. Organization — Kinds of property that may be insured.

— Any number of persons, not less than one hundred (100), may form an incorporated company for the purpose of cooperative insurance of the property of its members against destruction or damage by fire or lightning, which property to be insured shall embrace portable steam and gas engines, grain separators, clover hullers, corn shredders, hay balers, ensilage cutters, and attachments belonging thereto, including agricultural machinery of this class, which property to be insured shall be specifically set forth in the policy of the insured, such property to be in the state of Indiana and owned and operated by members of the company in which said property is insured. [Acts 1915, ch. 40, § 1, p. 92.]

Cross References. Actuaries may administer oaths, IC 27-2-1-1.

Collateral References. Farmowners' liability insurance risks and coverage. 93

A.L.R.3d 472; 31 A.L.R.4th 957; 33 A.L.R.4th 983; 34 A.L.R.4th 761; 35 A.L.R.4th 1063.

27-5-5-2. Incorporation — Powers — Construction. — The articles for forming such an association shall be signed by the persons who at first form such association, and shall be recorded in the office of the insurance commissioner. Such association shall be managed by such officers, rules, and regulations as the articles of association may provide, not in conflict with the statutory law of the state of Indiana, and, in the election of such officers, each member of such association shall be entitled to vote. Such association may sue or be sued by such name as shall be set forth in the articles of association, and shall have all other powers of corporate bodies not inconsistent with the purposes for which such associations are organized; Provided, That a company organized under this chapter shall not be liable to pay in excess of ten percent (10%) of the total amount of insurance in force, for any one (1) loss, to be paid pro rata to such members of such company or association sustaining such loss. This chapter shall not be construed in any way to affect IC 27-5-6 or IC 27-5-7. [Acts 1915, ch. 40, § 2, p. 92; P.L.252-1985, § 192.]

Cross References. Application of Act of 1919, IC 27-5-1-14.

Duties of auditor transferred to department of insurance, IC 27-1-1.

CHAPTER 6

WIND, HAIL AND CYCLONE MUTUAL — ALL PROPERTY

SECTION.

27-5-6-1. Organization and management.

27-5-6-2. IC 27-5-7 not affected by this chapter.

27-5-6-1. Organization and management. — Any number of persons not less than two hundred (200) may form an incorporated company for the purpose of mutual insurance of the property of its members against destruction or damage by cyclones, windstorms, or hail, which property to be insured shall be specifically set forth in the policies of the insured, such property to be in the state of Indiana, and to be owned by members of the company in which said property is insured. The articles for forming such association shall be signed by the persons who at first form such association, and shall be recorded in the office of the insurance commissioner. Such association shall be managed by such officers, rules, and regulations as the articles of association may provide, not in conflict with the statutory law of the state of Indiana, and in the election of such officers, each member of such association shall be entitled to one (1) vote. Such association may sue or be sued by such name as shall be set forth in the articles of association, and shall have all other powers of corporate bodies not inconsistent with the purposes for which such associations are organized; Provided, That a company organized under this act [IC 27-5-6-1, 27-5-6-2] shall not be liable to pay in excess of ten percent (10%) of the total amount of insurance in force, for any one (1) loss, to be paid pro rata to such members of such

company or association sustaining such loss. [Acts 1907, ch. 63, § 1, p. 88; P.L.252-1985, § 193.]

Cross References. Application of Act of 1919, IC 27-5-1-14.

Duties of auditor transferred to department of insurance, IC 27-1-1.

Collateral References. 43 Am. Jur. 2d Insurance § 471.

27-5-6-2. IC 27-5-7 not affected by this chapter. — This chapter shall not be construed in any way to affect IC 27-5-7. [Acts 1907, ch. 63, § 2, p. 88; P.L.252-1985, § 194.]

CHAPTER 7

WIND, HAIL AND CYCLONE MUTUAL — FARM PROPERTY

SECTION.

27-5-7-1. Organization and management.

27-5-7-1. Organization and management. — Any number of persons not less than fifty (50) may form an incorporated company for the purpose of mutual insurance of the property of its members against destruction or damage by cyclones, windstorms, or hail, which property to be insured shall embrace dwelling houses, barns, accompanying outbuildings and their contents, wagons, carriages, harness, household goods, wearing apparel, provisions, musical instruments and libraries, livestock, growing crops and crops severed from the ground, fruit and ornamental trees and shrubs, and live timber, such property being upon farms as farm property, and owned by members of the company in which said property is insured. The articles for forming such associations shall be signed by the persons who at first form such association and be recorded in the office of the recorder in such county or counties where such associations do business. Such associations shall be managed by such officers as their articles shall provide for, under such rules and regulations as they may adopt, not in conflict with the statutory law of the state, and in the election of such officers each member of the association shall be entitled to one (1) vote. Each such association may sue or be sued, by such name as shall be set forth in the articles of association, and shall have all the other powers of corporate bodies; Provided, That no company organized under this section shall do any business, or take any risks, or make any insurance in more than five (5) counties, which counties shall be contiguous, and shall be set forth in the articles of association; and Provided further, That no company organized under this section shall be liable to pay in excess of ten percent (10%) of the total amount of insurance in force, for any one (1) loss, to be paid pro rata to said members of such company or association sustaining such loss. [Acts 1899, ch. 235, § 1, p. 538; P.L.252-1985, § 195.]

Cross References. Application of Act of 1919, IC 27-5-1-14.

NOTES TO DECISIONS

ANALYSIS

Construction of policy.
Right to repair.

Construction of Policy.

A cyclone insurance policy covered loss caused by a very high wind which forced a boat against the insured property. *Queen Ins. Co. v. Hudnut Co.*, 8 Ind. App. 22, 35 N.E. 397 (1893).

In a policy insuring against damage by "windstorm, cyclone or tornado," the word "windstorm" derives some of its meaning from the words it is associated with, and it is to be construed to be insurance only against some extraordinary windstorm, although the wind need not be of a whirling nature. *Scottish Union & Nat'l Ins. Co. v. B.E. Linkenhelt & Co.*, 70 Ind. App. 324, 121 N.E. 373 (1918).

A policy insuring against loss by "windstorm" covered the loss of a horse which broke its halter in fright at the breaking in of a door by wind, and, in its lunge backward, forced its hind leg through the side of the barn, causing injury requiring its death. *Fidelity Phenix Fire Ins. Co. v. Anderson*, 81 Ind. App. 124, 130 N.E. 419 (1921).

Right to Repair.

Insured may proceed at once to repair the damage done by a tornado or cyclone and then recover the expense of such repairs from the company issuing the policy although the policy provides the insurer reserves the right to repair but there was nothing to show that the insurer exercised such right. *Scottish Union & Nat'l Ins. Co. v. B.E. Linkenhelt & Co.*, 70 Ind. App. 324, 121 N.E. 373 (1918).

Collateral References. 43 Am. Jur. 2d Insurance §§ 471, 509. 44 Am. Jur. 2d Insurance § 1559.

Determination of amount payable on loss to growing crop under policy insuring against loss or injury. 20 A.L.R.3d 924.

Farmowners' liability insurance risks and coverage. 93 A.L.R.3d 472; 31 A.L.R.4th 957; 33 A.L.R.4th 983; 34 A.L.R.4th 761; 35 A.L.R.4th 1063.

CHAPTER 8

LIVESTOCK INSURANCE — 7-COUNTY MUTUALS

SECTION.

- 27-5-8-1. Mutual livestock association — Organization — Fees.
27-5-8-2. Articles of association — Bonds.

SECTION.

- 27-5-8-3. Reports by secretary and treasurer.
27-5-8-4. Policies may be issued.

27-5-8-1. Mutual livestock association — Organization — Fees. —

Any number of persons not less than five (5) may form an association for the mutual insurance of horses, mules, asses, cattle, sheep, hogs, and other domestic livestock of its members against loss by death from disease or accident or against partial loss by accidental injury or by theft; Provided, That no company organized under this act [IC 27-5-8-1,— IC 27-5-8-4] shall do any business, take any risks or make any insurance in more than seven (7) counties, which counties shall be contiguous to one another, and shall be set forth in the articles of association; Provided further, That any association incorporated before or after February 25, 1911, having a less number of counties than seven (7) may at any time, by its board of directors, petition to increase the number of counties in its association not to exceed seven (7) in number as above provided; Provided further, That the fees for incorporating such association shall be fifteen dollars (\$15); Provided further, That any association, after its organization, shall pay a fee of five dollars (\$5) for each additional county petitioned for and included in its articles of associ-

ation thereafter. [Acts 1897, ch. 83, § 1, p. 125; 1911, ch. 47, § 1, p. 69; P.L.252-1985, § 196.]

Cross References. Duties of auditor transferred to department of insurance, IC 27-1-1.

Fees and charges, IC 27-1-3-15.

Livestock association, stock company, IC 27-5-9.

Collateral References. 43 Am. Jur. 2d Insurance §§ 179, 508.

Farmowners' liability insurance risks and coverage. 93 A.L.R.3d 472; 31 A.L.R.4th 957; 33 A.L.R.4th 983; 34 A.L.R.4th 761; 35 A.L.R.4th 1063.

27-5-8-2. Articles of association — Bonds. — The articles for forming such association shall be signed by the persons who at first form such association, and after the same is duly incorporated, such articles shall be recorded in the office of the recorder of the county in which the principal office is situated. Such association shall be managed by a board of directors of not less than three (3) in number and not more than seven (7) in number which board of directors shall be elected by the members of such association. Each member shall be entitled to one (1) vote: Provided, That in case of a vacancy of any such member of the board of directors, the remaining members of such board shall fill such vacancy for the unexpired term. The secretary shall give bond in the sum of one thousand dollars (\$1,000) for each and every county named in the articles of association, for the faithful discharge of his duties in accounting for all moneys which shall come into his hands, and the treasurer shall give bond in like manner in the sum of not less than three thousand dollars (\$3,000) for each and every county named in the articles of association, said bonds to be approved by the auditor of the county in which the principal office is situated; said treasurer to collect all assessments made by such association. Every such association may sue or be sued by such name as may be set forth in the articles of association and shall have all other powers of corporate bodies. [Acts 1897, ch. 83, § 2, p. 125; 1911, ch. 47, § 2, p. 69.]

Cross References. Bonds of officers, IC 27-1-7-14.

27-5-8-3. Reports by secretary and treasurer. — The persons holding the offices or performing the duties of secretary and treasurer of such associations shall, on the first Mondays of January and July of each year, make out a sworn statement in writing, setting forth the number of policies issued by the association, the amount issued on each kind of livestock, the number of losses paid and the aggregate amount thereof; the number of losses sustained and unpaid and the aggregate amount thereof, and the amount of money in the hands of the treasurer at the time of making such report; for the filing and recording of each of which statements, the association shall pay to the recorder of the county in which the principal office is situated the sum of one dollar (\$1.00). He shall also file said report with the auditor of state [insurance commissioner], who shall receive like compensation and who shall have power to increase bonds at any time. [Acts 1897, ch. 83, § 3, p. 125.]

Compiler's Notes. The bracketed words "insurance commissioner" were inserted by the compiler. All rights, powers and duties conferred by law upon the auditor of state respecting the business of insurance were continued in full force and conferred upon the commissioner of insurance by section 2 of Acts 1919, ch. 48, p. 109, which was repealed by Acts 1935, ch. 162, § 276, p. 588, enacting the insurance law. All rights, powers and duties conferred by law upon the insurance department and the commissioner of insurance un-

der prior acts were transferred by Acts 1935, ch. 162, § 24 to the department of insurance by former IC 27-1-3-17. All the rights, powers and duties conferred by any law upon the department of insurance or insurance commissioner were transferred to the present department of insurance and insurance commissioner by Acts 1945, ch. 351, §§ 1-5, p. 1694 (IC 27-1-1).

Cross References. Duties transferred to department of insurance, IC 27-1-1.

27-5-8-4. Policies may be issued. — Any association organized under the provisions of this chapter shall be entitled to issue policies of insurance to any of its members against loss of livestock by death from disease or accident, or against partial loss by accident or theft. [Acts 1897, ch. 83, § 4, p. 125; P.L.252-1985, § 197.]

CHAPTER 9

LIVESTOCK INSURANCE

SECTION.

- 27-5-9-1. Organization authorized.
- 27-5-9-2. Articles of association.
- 27-5-9-3. Capital stock — Payment.
- 27-5-9-4. Directors — Election — Term.
- 27-5-9-5. Meetings — Officers — Quorum.
- 27-5-9-6. Transfer of stock.
- 27-5-9-7. Amount insured.
- 27-5-9-8. Real estate — Holding.
- 27-5-9-9. Statement as to stock subscriptions.
- 27-5-9-10. Fees.
- 27-5-9-11. Policies.
- 27-5-9-12. Form of policies.

SECTION.

- 27-5-9-13. Statement of condition.
- 27-5-9-14. Foreign companies.
- 27-5-9-15. Liability of stockholders.
- 27-5-9-16. Organized companies to comply with chapter.
- 27-5-9-17. Penalty for violation of chapter.
- 27-5-9-18. Obligations imposed by other states.
- 27-5-9-19. Copies of articles by foreign companies.
- 27-5-9-20. Certificates to foreign companies.
- 27-5-9-21. Receivers — Appointment.
- 27-5-9-22. Applicability of chapter.

27-5-9-1. Organization authorized. — Any number of citizens of this state, not less than five (5), may organize an insurance company for the purpose of insuring the owners of livestock against loss of such stock by death from any cause, and against theft or accident. [Acts 1893, ch. 94, § 1, p. 174.]

Cross References. Livestock association, mutual, IC 27-5-8.

Collateral References. 43 Am. Jur. 2d Insurance §§ 179, 508.

Farmowners' liability insurance risks and coverage. 93 A.L.R.3d 472; 31 A.L.R.4th 957; 33 A.L.R.4th 983; 34 A.L.R.4th 761; 35 A.L.R.4th 1063.

27-5-9-2. Articles of association. — The persons desiring to organize an insurance company under this chapter shall unite in articles of association setting forth the name of the corporation, the purpose of incorporating under this chapter, the locality of the principal office of the company, the names and residences of the subscribers to the articles of association, and the amount of stock subscribed by each, and shall file such articles of association with the secretary of state, who shall be entitled to a fee of ten

dollars (\$10) for the filing, the same to be paid by said company. [Acts 1893, ch. 94, § 2, p. 174; P.L.252-1985, § 198.]

Cross References. Fees and charges, IC 27-1-3-15.

Fees payable to secretary of state, IC 27-1-20-13.

27-5-9-3. Capital stock — Payment. — No joint stock, livestock insurance company shall be incorporated under this chapter with less capital than one hundred thousand dollars (\$100,000) nor more than five hundred thousand dollars (\$500,000), which shall be divided into shares of one hundred dollars (\$100) each; one hundred thousand dollars (\$100,000) of such capital shall be paid in upon the stock subscribed, and each subscription before incorporation shall be accompanied by a certificate of the auditor of the county or the clerk of the circuit court of the county wherein such subscriber resides, that the subscriber is, in his opinion, pecuniarily good and responsible to the extent of the unpaid portion or liability agreed to be assumed. The manner and time in which payments shall be made upon subscribed stock after one hundred thousand dollars (\$100,000) shall have been paid in thereon shall be prescribed by the board of directors. [Acts 1893, ch. 94, § 3, p. 174; 1907, ch. 199, § 1, p. 336; P.L.252-1985, § 199.]

Cross References. Paid in capital stock requirements of domestic stock companies, IC 27-1-6-14.

27-5-9-4. Directors — Election — Term. — The business of companies organized under this chapter shall be managed and conducted by not less than five (5) nor more than seven (7) directors, who shall each be the owner, in his individual name, of not less than ten (10) shares of the capital stock of such company. Said directors shall hold office for one (1) year and until their successors are elected and qualified. The directors shall be chosen, once each year, by the stockholders voting by ballot, in person or by proxy, at the principal office of the company, at such times as shall be provided in the bylaws of the company. The first directors, the president, vice president, secretary, and treasurer shall be named in the articles of association, who shall serve during the first year. [Acts 1893, ch. 94, § 5, p. 174; P.L.252-1985, § 200.]

Cross References. Stock companies, directors, IC 27-1-7-10 — IC 27-1-7-12.

27-5-9-5. Meetings — Officers — Quorum. — After the annual election of directors, the newly elected directors shall meet within five (5) days, and shall choose from their number a president and vice-president, and shall, either from their number or from the stockholders, choose a secretary and treasurer, the duties of which officers and the manner of filling vacancies in said offices shall be prescribed by the by-laws of the company. A majority of the directors shall constitute a quorum to do business, and the meeting of the board, both regular and special, shall be called and held as shall be provided by the by-laws of the company. The board of directors, or a majority

of them, may appoint any other officers or agents necessary for the transaction of the business of the company, and pay such salaries and take such securities as they may judge reasonable; they may ordain and establish such by-laws as shall appear to them necessary for regulating and conducting the business of the company. [Acts 1893, ch. 94, § 6, p. 174.]

27-5-9-6. Transfer of stock. — Transfers of stocks may be made on the books of the company by any shareholder or his legal representative, subject to such reasonable restrictions as the directors may, from time to time, make in their by-laws, and subject also to any provisions of the laws of this state relating to such transfers. [Acts 1893, ch. 94, § 7, p. 174.]

Cross References. IC Evidence of stock ownership, IC 27-1-7-5.

27-5-9-7. Amount insured. — No livestock company doing business in this state shall place upon any one (1) risk or animal a greater amount than one-twentieth ($\frac{1}{20}$) of its actual paid-up capital. [Acts 1893, ch. 94, § 8, p. 174.]

27-5-9-8. Real estate — Holding. — No company organized under this chapter shall purchase, hold, or convey real estate except for the purposes and in the following manner:

- (1) First, such as is requisite for its convenient accommodation in the transaction of its business.
- (2) Secondly, such as is mortgaged to it in good faith, by way of security for loans previously contracted, or for money due.
- (3) Thirdly, such as is conveyed to it in satisfaction of debt previously contracted in its legitimate business.
- (4) Fourth, such as is purchased at sale upon judgment, decree, or mortgages obtained or made for such debts. [Acts 1893, ch. 94, § 9, p. 174; P.L.252-1985, § 201.]

Cross References. Real estate holdings by companies other than life, IC 27-1-13-3.

27-5-9-9. Statement as to stock subscriptions. — Whenever a majority of the directors, of whom the president shall be one, shall file with the commissioner of insurance a statement under oath that there has been a subscription of not less than one hundred thousand dollars (\$100,000) to the capital stock of such company and not less than one hundred thousand dollars (\$100,000) thereof has been actually paid in and the certificate required by section 3 [IC 27-5-9-3] of this chapter and the articles of association have been filed in the office of the secretary of state, the commissioner shall, if satisfied that the provisions of this chapter have been complied with, certify to the secretary of state the name of the company, the amount of its subscribed and paid-up capital, and the principal place of business of the company, which certificate shall be filed with the secretary of state, and thereupon the secretary of state shall issue to such company a certificate of incorporation authorizing it to do business, and such certificate

shall be conclusive evidence of the validity of the organization of such company. [Acts 1893, ch. 94, § 10, p. 174; 1907, ch. 199, § 3, p. 336; P.L.252-1985, § 202.]

Cross References. Requirements for stock companies, IC 27-1-6-14.

27-5-9-10. Fees. — The fees of the auditor [insurance commissioner] and secretary of state shall be ten dollars (\$10.00) each for such certificate, which shall be paid by such company. [Acts 1893, ch. 94, § 11, p. 174.]

Compiler's Notes. The bracketed words "insurance commissioner" were inserted by the compiler. All rights, powers and duties conferred by law upon the auditor of state respecting the business of insurance were continued in full force and conferred upon the commissioner of insurance by section 2 of Acts 1919, ch. 48, p. 109, which was repealed by Acts 1935, ch. 162, § 276, p. 588, enacting the insurance law. All rights, powers and duties conferred by law upon the insurance department and the commissioner of insurance under prior acts were transferred by Acts 1935,

ch. 162, § 24 to the department of insurance by former IC 27-1-3-17. All the rights, powers and duties conferred by any law upon the department of insurance or insurance commissioner were transferred to the present department of insurance and insurance commissioner by Acts 1945, ch. 351, §§ 1-5, p. 1694 (IC 27-1-1).

This section may be superseded by IC 27-1-3-15, IC 27-1-20-13.

Cross References. Fees now charged, IC 27-1-3-15, IC 27-1-20-13.

27-5-9-11. Policies. — Every company organized under the provisions of this chapter may make and issue policies of insurance against loss of livestock by reason of death from any cause, accident, or theft anywhere within the limits of the United States, but the principal office of said company shall be kept in the state of Indiana. [Acts 1893, ch. 94, § 12, p. 174; P.L.252-1985, § 203.]

27-5-9-12. Form of policies. — The policies of such company shall be in such form as may be prescribed by the board of directors, and shall be subscribed by the president and secretary, and the losses under policies for which the company may be liable shall be adjusted and settled in such a manner as may be directed by the board of directors, within such time as may be limited in the policy, not exceeding ninety (90) days from the date of receiving notice of the loss. Provided, That the company may limit the period within which suit may be brought upon any policy, but no limit less than twelve (12) months from date of loss shall be fixed. [Acts 1893, ch. 94, § 13, p. 174.]

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Notice of Loss.

A provision in a livestock insurance policy requiring immediate notice of sickness of the animal insured is construed as requiring no-

tice within a reasonable time. *National Live Stock Ins. Co. v. Simmons*, 62 Ind. App. 15, 111 N.E. 18 (1916).

27-5-9-13. Statement of condition. — After the third year of the existence of any company organized in this state the board of directors, by its president and secretary, shall, on the 31st day of December in each year

or within thirty (30) days thereafter make and file with the auditor of state [insurance commissioner] a statement under oath, signed by the president thereof and attested by the secretary, setting forth the number of policies issued, the number of losses adjusted and not paid, the number of losses unadjusted and the amount thereof, the amount of paid-up capital stock, the amount of subscribed capital stock, the amount of authorized capital stock and a description of the particular kind, character and amount of assets of the company, as the same existed on said thirty-first day of December, and shall, when required by the auditor of state [insurance commissioner] so to do, publish the same in some newspaper nearest to the principal office of the company and said company shall pay the auditor of state [insurance commissioner] a fee of five dollars (\$5.00) for filing such statement. [Acts 1893, ch. 94, § 14, p. 174; 1907, ch. 199, § 4, p. 336.]

Compiler's Notes. The bracketed words "insurance commissioner" were inserted by the compiler. All rights, powers and duties conferred by law upon the auditor of state respecting the business of insurance were continued in full force and conferred upon the commissioner of insurance by section 2 of Acts 1919, ch. 48, p. 109, which was repealed by Acts 1935, ch. 162, § 276, p. 588, enacting the insurance law. All rights, powers and duties conferred by law upon the insurance department and the commissioner of insurance un-

der prior acts were transferred by Acts 1935, ch. 162, § 24 to the department of insurance by former IC 27-1-3-17. All the rights, powers and duties conferred by any law upon the department of insurance or insurance commissioner were transferred to the present department of insurance and insurance commissioner by Acts 1945, ch. 351, §§ 1-5, p. 1694 (IC 27-1-1).

For fees now charged, see IC 27-1-3-15, IC 27-1-20-13.

27-5-9-14. Foreign companies. — No company organized under the laws of any other state or country shall be permitted to do the business of livestock insurance in this state unless it shall have a subscribed capital of one hundred thousand dollars (\$100,000) or more and an actual paid-up capital of not less than one hundred thousand dollars (\$100,000), nor shall it be lawful for any such company to do business in this state until it shall have furnished, under oath, to the insurance commissioner a statement of like character as that required by this chapter of companies organized under its provisions, which statement shall also show the amount of actual paid-up capital possessed by the company and shall be renewed semiannually on the first Monday of January and July each year. [Acts 1893, ch. 94, § 15, p. 174; 1907, ch. 199, § 5, p. 336; P.L.252-1985, § 204.]

27-5-9-15. Liability of stockholders. — The stockholders of companies organized under the provisions of this chapter shall each be liable personally for any losses or debts of the company to the extent of and not beyond the stock subscribed by such stockholders. [Acts 1893, ch. 94, § 16, p. 174; P.L.252-1985, § 205.]

27-5-9-16. Organized companies to comply with chapter. — No joint stock livestock insurance company doing business in this state shall continue the same after December 31, 1907, without having first complied with the provisions of this chapter. [Acts 1893, ch. 94, § 17, p. 174; 1907, ch. 199, § 6, p. 336; P.L.252-1985, § 206.]

27-5-9-17. Penalty for violation of chapter. — A person who recklessly violates this chapter commits a Class B misdemeanor. [Acts 1893, ch. 94, § 18, p. 174; 1978, P.L. 2, § 2721.]

Cross References. Penalties for misdemeanors, IC 35-50-1, IC 35-50-3, IC 35-50-5-2.

27-5-9-18. Obligations imposed by other states. — When any other state or country shall impose any obligation upon any livestock insurance company of this state, the like obligations shall be imposed on similar corporations and their agents of such state or country doing business in this state; and it shall be the duty of the auditor of state [insurance commissioner] to enforce the provisions of this section, and, for that purpose, he may refuse to grant such company a certificate to do business in this state or revoke any that has been granted. [Acts 1893, ch. 94, § 19, p. 174.]

Compiler's Notes. The bracketed words "insurance commissioner" were inserted by the compiler. All rights, powers and duties conferred by law upon the auditor of state respecting the business of insurance were continued in full force and conferred upon the commissioner of insurance by section 2 of Acts 1919, ch. 48, p. 109, which was repealed by Acts 1935, ch. 162, § 276, p. 588, enacting the insurance law. All rights, powers and duties conferred by law upon the insurance department and the commissioner of insurance un-

der prior acts were transferred by Acts 1935, ch. 162, § 24 to the department of insurance by former IC 27-1-3-17. All the rights, powers and duties conferred by any law upon the department of insurance or insurance commissioner were transferred to the present department of insurance and insurance commissioner by Acts 1945, ch. 351, §§ 1-5, p. 1694 (IC 27-1-1).

Cross References. Retaliatory provisions, IC 27-1-20-12.

27-5-9-19. Copies of articles by foreign companies. — Such foreign company shall furnish to the auditor of state [insurance commissioner] certified copies of its articles of association or charter, and its by-laws, together with a sworn statement of its business of the preceding year, itemized as directed by the auditor of state [insurance commissioner]. Such foreign corporation shall also furnish to the auditor of state, [insurance commissioner], on the first day of January and July of each year, a certificate from the insurance department, if any, of its home state or country, that it is authorized to do business in such home state or country, and shall also, if the auditor of state [insurance commissioner] requires, submit to a full examination, of its business affairs by the auditor of state [insurance commissioner]. Such company shall pay the fees for examination which shall not exceed five dollars (\$5.00) per day for each person employed in making such examination. [Acts 1893, ch. 94, § 20, p. 174.]

Compiler's Notes. The bracketed words "insurance commissioner" were inserted by the compiler. All rights, powers and duties conferred by law upon the auditor of state respecting the business of insurance were continued in full force and conferred upon the commissioner of insurance by section 2 of Acts 1919, ch. 48, p. 109, which was repealed by Acts 1935, ch. 162, § 276, p. 588, enacting the insurance law. All rights, powers and duties conferred by law upon the insurance depart-

ment and the commissioner of insurance under prior acts were transferred by Acts 1935, ch. 162, § 24 to the department of insurance by former IC 27-1-3-17. All the rights, powers and duties conferred by any law upon the department of insurance or insurance commissioner were transferred to the present department of insurance and insurance commissioner by Acts 1945, ch. 351, §§ 1-5, p. 1694 (IC 27-1-1).

This section is affected by IC 27-1-17-4,

dealing with procedure for admission of foreign or alien insurance companies.

transferred to department of insurance, IC 27-1-1.

Cross References. Duties of auditor

27-5-9-20. Certificates to foreign companies. — Upon the compliance with the provisions of section 19 [IC 27-5-9-19] and all of the other provisions of this chapter applicable to foreign companies and the payment of a fee of twenty-five dollars (\$25), the insurance commissioner may issue to such foreign company so complying a certificate of authority to do business within this state for a period of six (6) months from the date of its issue unless the same be sooner revoked; Provided, That such certificate of authority to do business in this state shall not be issued unless such corporation is doing business in conformity with the provisions of this chapter. The commissioner shall have power to revoke or modify any certificate of authority when any condition prescribed by the laws granting it no longer exists. [Acts 1893, ch. 94, § 21, p. 174; P.L.252-1985, § 207.]

Cross References. Duties of auditor transferred to department of insurance, IC 27-1-1.

27-5-9-21. Receivers — Appointment. — A receiver may be appointed for any such corporation under IC 34-48-1. In the event of the appointment of a receiver for any such corporation, such receiver shall be entitled to receive all securities of such company deposited with the insurance commissioner. And receivers may be appointed by the courts of this state for foreign corporations doing business in this state under this chapter, and such receivers shall have the right to the possession of any securities of such corporation in the hands of the commissioner. And receivers appointed under the provisions of this chapter shall collect or dispose of securities and pay out the funds realized therefrom as the courts appointing them may direct. [Acts 1893, ch. 94, § 22, p. 174; P.L.252-1985, § 208; P.L.1-1998, § 149.]

Cross References. Duties of auditor transferred to department of insurance, IC 27-1-1.

Exclusive right of department of insurance to make application for receivers, IC 27-1-20-23.

27-5-9-22. Applicability of chapter. — The provisions of this chapter shall apply to all individuals and parties, and to all companies and associations, whether incorporated or not, engaged on or after February 28, 1893, in the insurance of livestock, except mutual companies organized by the farmers of this state, and it is unlawful for any corporation or association, whether organized in this state or elsewhere, either directly or indirectly to engage in the business of insuring livestock or entering into any contract substantially amounting to insurance on livestock, or in any manner to aid therein, in this state, without first having complied with all the provisions of this chapter. [Acts 1893, ch. 94, § 23, p. 174; P.L.252-1985, § 209.]

CHAPTER 10

FARMERS' MUTUAL ASSOCIATIONS — FORMATION

SECTION.

27-5-10-1. Organization and management.

27-5-10-1. Organization and management. — Any number of persons not less than ten (10) may form an incorporated company for the purpose of mutual insurance of the property of its members against loss by fire or damage by lightning, which property to be insured shall embrace dwelling houses, barns, accompanying outbuildings and their contents, farm implements and machinery, hay, grain, wool, and other farm products, livestock, wagons, carriages, automobiles, gasoline engines, tractors, harness, household goods, wearing apparel, provisions, musical instruments, libraries, such property or any part thereof being used for farming or gardening purposes, and also churches outside of the corporate limits of cities and towns and their contents. The articles for forming such associations shall be signed by the persons who at first form such association, and shall be recorded in the office of the recorder of the county or counties where such association does business, such association shall be managed by such officers as their articles may provide for, and, in the election of such officers, each member of the association shall be entitled to one (1) vote. Every such association may sue or be sued by such name as shall be set forth in the articles of association and shall have all the other powers of corporate bodies; Provided, That no company organized under this section shall do any business or take any risks or make any insurance in more than three (3) counties, which counties shall be contiguous and shall be set forth in its articles of association; and Provided, further, That any mutual farm insurance company organized before September 19, 1881, and doing business pursuant to the laws of the state of Indiana may, without reorganization, avail itself of and be governed by all of the provisions of this section by the adoption by its board of directors of a resolution accepting the provisions of this section. A copy of such resolution, duly certified by the president and secretary of such company, shall be filed with the recorder of the county or counties where such association does business. All mutual farm insurance companies organized after September 19, 1881, pursuant to the laws of the state of Indiana shall be subject to all of the provisions of this section. [Acts 1881 (Spec. Sess.), ch. 114, § 1, p. 714; 1917, ch. 15, § 1, p. 47; P.L.252-1985, § 210.]

Cross References. Application of Act of 1919, IC 27-5-1-14.

Application of regulation of insurance rates to farmers' mutual insurance companies, IC 27-1-22-2.

Authority of farmers' mutual insurance companies to write all types, IC 27-5-3-1 — IC

27-5-3-5, IC 27-6-2-1, IC 27-6-2-2.

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and is bound to know of the corporate power of such association. *Farmers Mut. Fire Ins. Co. v. Jackman*, 35 Ind. App. 1, 73 N.E. 730 (1905).

In General.

If an attempt is made in good faith to organize a mutual insurance company under the statute providing for the organization of farmers' companies, a policyholder cannot question the validity of such organization in an action on a premium note. *Farmers Ins. Co. v. Borders*, 26 Ind. App. 491, 60 N.E. 174 (1901).

The statutory provisions prescribing the mode in which an act shall be done is a proper provision for the articles of association of a farmers' mutual insurance association, and forms a part of the contract between the insurer and the assured, which cannot be waived, and anyone becoming a member of such association is charged with knowledge

By-Laws as Part of Policy.

By-laws of a mutual insurance company that are not inconsistent with the provisions of a policy become a part of the contract of insurance. *Brashears v. Perry County Farmers Protective Ins. Co.*, 51 Ind. App. 8, 98 N.E. 889 (1912).

Title of Property Insured.

This section designates the kinds of property that may be insured, but it does not attempt to designate the character of the title the insured shall have in such property. That may be done by the corporation by its rules or by-laws, of which its members must take notice. *Farmers Mut. Fire Ins. Co. v. Jackman*, 35 Ind. App. 1, 73 N.E. 730 (1905).

CHAPTER 11

FIRE PATROLS

27-5-11-1 — 27-5-11-4. [Repealed.]

Compiler's Notes. This chapter, relating to fire patrols, was repealed by Acts 1972, P.L. 191, § 1.

CHAPTER 12

FIRE PATROLS — CITIES OF 200,000 OR MORE

27-5-12-1 — 27-5-12-5. [Repealed.]

Compiler's Notes. This chapter, relating to organization of companies for the purpose of discovering fires and of saving property and

life from conflagration, in cities of more than two hundred thousand population, was repealed by Acts 1972, P.L. 191, § 2.

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